JUSTICE

Rights of suspected and accused persons across the EU: translation, interpretation and information

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Foreword

Protecting the human rights of individuals subject to criminal proceedings is an essential element of the rule of law. Persons who are suspected or accused of crimes in countries other than their own are particularly vulnerable, making appropriate procedural safeguards crucial. In addition, people with disabilities and children may have specific needs that may place them at further disadvantage.

Proper protection of rights is also vital to strengthen trust among European Union (EU) Member States – an important prerequisite for fostering effective cooperation in matters relating to the EU's area of freedom, security and justice. The EU has introduced various initiatives to strengthen such trust, including Directive 2010/64/EU on the right to interpretation and translation and Directive 2012/13/EU on the right to information. These instruments aim to ensure that all suspects and accused persons promptly receive information about their rights, and that they receive translation and interpretation services where necessary to fully exercise their right of defence.

This report outlines EU Member States' legal frameworks and policies regarding these rights. It also identifies promising practices. Topics covered include assessing the need for translation and/or interpretation, as well as the quality of any such services provided; ensuring effective communication with counsel; providing information on rights in an accessible manner; permitting practical access to case materials; and, remedies available for individuals seeking to challenge interferences with their rights. The final chapter focuses on the needs of vulnerable persons.

This report supports the EU's promise of providing an effective area of security, freedom and justice the protection of rights across all EU Member States.

Michael O'Flaherty
Director

Country codes

Code	EU Member State
AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia
UK	United Kingdom

Contents

Figures and tables

Promising practices

Acronyms

CJEU	Court of Justice of the European Union
CoE	Council of Europe
EAW	European Arrest Warrant
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRA	European Union Agency for Fundamental Rights
LITs	Legal interpreters and translators
UN HRC	United Nations Human Right Committee

Executive summary and FRA Opinions

This report – based on a request by the European Commission – outlines the research findings of the European Union Agency for Fundamental Rights (FRA) on Member States' legal frameworks and policies on two specific fair trial rights: the right to translation and interpretation in criminal proceedings covered by Directive 2010/64/EU and the right to information in criminal proceedings covered by Directive 2012/13/EU.

It provides guidance on how to strengthen the protection of suspected and accused persons' rights in the EU in the context of the two directives' overall objective of contributing to fair trials across the EU. The findings identify opportunities for further bolstering the protection of these rights, including in the following areas:

- guidance on assessing whether interpretation and translation are necessary, and on the appropriate timeline for providing these services;
- effective translation of essential documents;
- safeguards to ensure that suspects and accused persons can effectively communicate with their legal counsel;
- quality of interpretation and translation;
- accessibility of information about the rights of suspected and accused persons, including those arrested or detained;
- effective and practical access to materials of the case;
- availability of effective remedies;
- existence of effective measures to take into account particular needs of suspects and accused persons who are vulnerable.

In some cases, national laws transposing the minimum standards set out under the two directives could be improved. In other cases, the application of relevant legal provisions in practice could be improved.

Regarding opportunities to improve national laws, FRA's findings show, for instance, that it is essential for national rules to clarify that suspects and accused persons in all EU Member States are to be promptly provided with information about at least all those procedural rights listed in Article 3 of Directive 2012/13/EU. Providing this information can neither be made dependent on whether or not the person is deprived of liberty nor on any other limiting conditions.

It is also necessary for suspected and accused persons deprived of their liberty to receive, in all EU Member States, a written Letter of Rights containing information about at least those rights listed in Article 4 of Directive 2012/13/EU. FRA's findings show that introducing a uniform template of the letter for use by all criminal justice authorities in a given country helps avoid legal uncertainty and a lack of legal clarity – this can result when each court and police station uses its own template and individuals receive information differently depending on the authority and region involved.

Another example relates to the grounds for justifying restrictions on access to the materials of the case and their use. In line with Directive 2012/13/EU, any such restrictions provided for in the laws and practices of EU Member States are to be interpreted strictly, in accordance with the right to a fair trial. At the same time, any materials of the case essential to effectively challenging the lawfulness of an arrest or detention always have to be made available to arrested persons or their lawyers – without any restrictions. In addition, in light of Directive 2012/13/EU and Article 47 of the Charter of Fundamental Rights of the EU (EU Charter), it is also essential that EU Member States' rules allow for judicial review of all decisions restricting access to the materials of a case, including during the pre-trial phase.

There is room for improvement in the practical implementation of the distinction between suspects and witnesses, which affects whether and when information about procedural rights is delivered. In line with relevant case law of the European Court of Human Rights (ECtHR), rights granted to suspects must also be granted to witnesses when the latter are in reality suspected of a criminal offence.

Findings likewise underscore that EU Member States should encourage criminal justice authorities not to interpret general concepts too broadly to avoid undermining the effective protection of suspected and accused persons' rights; for example, Directive 2010/64/EU's reference to the need to provide interpretation and translation "without delay" or "within a reasonable period of time", which is replicated in most EU Member States' laws.

National legal systems in EU Member States generally do give the persons concerned the right to complain about the quality of provided interpretation or translation service. But it is also important to put safeguards in place to help avoid low-quality interpretation and translation in the first place. FRA's research shows that criminal justice professionals with low awareness of the specificities of working with legal interpreters and translators in criminal proceedings have difficulties using their services effectively. When implementing Article 6 of Directive 2010/64/EU, which concerns training, EU Member States should therefore consider introducing mandatory training modules and guidelines for criminal justice professionals to help them

use the services of legal interpreters and translators more effectively – including by enabling criminal justice authorities to monitor and assess the quality of interpretation and translation services.

Finally, in accordance with Article 47 of the EU Charter, all EU Member States must have in place systems to ensure access to an effective remedy in case of violations of any of the rights guaranteed under the two directives. In this context, the obligation to keep records of the provision of information or of interpretation, as set out in both directives, represents an important safeguard. Any such recordings will be particularly essential as evidence during procedures to challenge failures or refusals of the competent authorities to provide information or to challenge the low quality of translation services received. This means that relevant safeguards to ensure that record-keeping mechanisms are of good quality are – from the perspective of an individual and his or her right to an effective remedy and a fair trial – essential.

FRA Opinions

Based on the overall findings of this research and following the structure of the report, FRA has formulated opinions to offer concrete guidance on effectively protecting the procedural rights of suspected and accused persons in line with Directives 2010/64/EU and 2012/13/EU, with a view to ensuring a fair trial.

Assessing the necessity of interpretation and translation more effectively

Most EU Member States' systems generally lack detailed guidance on how to assess the need for interpretation and translation – for example, on how a competent authority should determine what minimum level of language knowledge a person should have to allow them to "fully" understand and follow criminal proceedings. Currently, the actual practices of different authorities can vary considerably.

FRA Opinion 1

When implementing their obligations concerning suspected and accused persons' right to interpretation or translation under Directive 2010/64/EU, EU Member States should consider developing practical guidance on how to assess the need for interpretation and translation. When developing such guidance, competent authorities should consider consulting relevant national associations that represent legal interpreters and translators who have practical experience with providing such services in criminal justice proceedings.

Guiding authorities on the importance of translating essential documents

Not all Member States' legislation lists the essential documents for which written translations have to be provided to safeguard the fairness of proceedings – such as judgments, charges or indictments, and decisions depriving persons of their liberty. Where such lists do not exist, decisions on which documents have to be translated are largely made on a case-by-case basis. Practitioners also note that, in practice, authorities often provide oral rather than written translations of essential documents – particularly once someone is represented by a lawyer –due to time and budget constraints, among other reasons.

FRA Opinion 2

To enhance legal certainty and clarity, and in line with the overall objective of strengthening the protection of rights of suspects and accused persons under Directive 2010/64/EU, EU Member States should consider introducing specific lists of essential documents – and providing guidance on how to apply any exceptions. Extending such lists of essential documents beyond the three types of documents listed in Article 3 of Directive 2010/64/EU, which lays down minimum common standards in this regard, is to be encouraged given that written translations constitute an additional fair trial safeguard.

Ensuring that suspected or accused persons can effectively communicate with their legal counsel

FRA's findings show that the extent to which interpretation is provided for communication between a suspected or accused person and their lawyer varies from state to state, and that several Member States have introduced specific limitations. For example, in some legal systems, interpretation services for communicating with legal counsel are provided for a limited length of time only, or only for specific types of procedural actions. In other Member States, interpretation for communication with legal counsel is made largely dependent on the provision of legal aid, or coverage of the costs of such interpretation is guaranteed only where interpreters are appointed by state authorities.

FRA Opinion 3

To safeguard the effectiveness of the right to a fair trial in line with the overall aim of Directive 2010/64/EU, EU Member States should consider ensuring that suspected and accused persons receive, at the very beginning of proceedings, explicit information about the availability of interpretation for communicating with their legal counsel. These should be outlined in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

Safeguarding the confidentiality of communication between suspected or accused persons and their legal counsel

FRA's findings show that using the same state-appointed interpreters to interpret both during police interrogations and communications between a defendant and their lawyer may present a conflict of interest. It may conflict with the principle of confidentiality of client-counsel communications. While relying on interpreters, who the police or other criminal justice authorities regularly use, can be beneficial in terms of availability, speed, and knowledge of the procedures, they can be unsuitable for interpretation in a client-counsel relationship, unless strict quality safeguards are put in place.

FRA Opinion 4

EU Member States should consider introducing specific safeguards to ensure that the confidentiality of communication between suspected or accused persons and their legal counsel is strictly respected and not jeopardised by the use of state-appointed interpreters.

Safeguarding the quality of interpretation and translation services

FRA's research shows that some Member States have set up registers of legal interpreters and translators. However, the minimal qualifications needed to be included in such registers can vary broadly both among and within states. In addition, there are no common standards on how to establish an effective register – for example, whether it is better to have one central register or multiple registers; who should maintain the register(s); and what they/it should include. This means that Member States have very different systems. Some have very minimal requirements for admission to a register; others have no requirements at all. As a result, the quality of services provided varies considerably, even when registers contain officially qualified interpreters and translators.

FRA Opinion 5

When establishing a register of legal interpreters and translators in line with Article 5 (2) of Directive 2010/64/EU, EU Member States should consider introducing relevant safeguards to maximise the quality of translation and interpretation services ensured through such a register. For instance, they should consider defining clear admission criteria, and providing for regular registration renewals, mandatory professional development for legal interpreters and translators, and special training for legal interpreters and translators who work with vulnerable groups. At the same time, EU Member States should consider making it mandatory for criminal justice authorities to use such registers when they need interpretation and translation services in the context of criminal proceedings.

Not all EU Member States have established registers of independent interpreters and translators, instead using alternative means to secure suitable legal interpreters or translators. In fact, given that interpreters and translators have to be secured for a number of languages, and often in unplanned, urgent circumstances, nearly all EU Member States have alternative means of securing interpretation and translation services – even in countries with official registers. These often take the form of, for example, alternative lists of interpreters and translators with more flexible minimum registration requirements than those applicable to official registers. These requirements are not always clearly set out or harmonised across the country, and are often very lenient. Codes of conduct or ethic codes developed by national associations of legal interpreters and translators are an example of a promising practice that helps protect the quality of interpretation and translation services.

FRA Opinion 6

To ensure that the interpretation and translation provided meets the quality required under Directive 2010/64/EU, Member States could consider developing clear and binding rules on the conditions for using alternative ways of securing legal interpreters or translators. Such rules should include specific quality safeguards, such as a minimum level of education or years of experience to be included on alternative lists. Member States should also consider supporting other measures that help safeguard the quality of interpretation and translation services, such as codes of conduct and ethic codes specifying professional quality standards. National associations of legal interpreters and translators often voluntarily develop such codes. Using information and communication technology (ICT)*-solutions or engaging in cross-border cooperation*

with other EU Member States could help ensure the quality of services even when appropriately qualified translators or interpreters are not available in a given country. In a cross-border context, criminal justice authorities could share resources, such as legal interpreters and translators available in their national registers.

Giving suspects and accused clear information about their rights

FRA's findings show that, in EU Member States, information about rights is frequently provided by using language from the relevant national criminal law provisions. This is often overly legalistic, undermining the actual effectiveness of providing information. This applies to both information about rights provided to suspected or accused individuals who are not deprived of their liberty, as well as to arrested or detained individuals who have the right to receive such information via a written Letter of Rights pursuant to Directive 2012/13/EU.

FRA Opinion 7

When implementing Articles 3, 4 and 5 of Directive 2012/13/EU, which concern the obligation to inform suspected and accused persons about their rights in an accessible manner, EU Member States should consider ensuring that such information is delivered in non-technical and accessible language. This also applies to the written Letter of Rights, which should not simply cite language extracted from criminal law provisions. To render the delivery of information about rights more effective – with a view to properly safeguarding a fair trial – the information provided should be accompanied by explanations adapting the information to the actual circumstances. The information provided should also include details on how the rights can actually be exercised in the course of proceedings.

Facilitating access to the materials of the case

FRA's findings show that EU Member States have different approaches in terms of the extent to which they enable access to materials of the case during the various stages of proceedings, including how they use available grounds for refusing access. This is particularly the case during the early pre-trial phase, such as police questioning. In most Member States, individuals may incur some indirect costs when accessing case materials – for example, photocopying costs.

FRA Opinion 8

Article 7 of Directive 2012/13/EU provides the right to access materials of the case, but recognises that this right is not absolute and has to be weighed against other interests that require protection. In their efforts to safeguard the fairness of the proceedings in line with this provision, EU Member States should consider introducing practical arrangements to facilitate access to case materials – for example, by requiring criminal justice authorities to proactively share such materials with defendants or their lawyers in the course of proceedings. Rules that unnecessarily hamper the effectiveness of the right of access should be avoided, such as rules limiting where persons or their lawyers can consult information, what type of information they can consult, or for how long. EU Member States should also consider exploring the possibility of allowing individuals or their lawyers to obtain copies with the use of digital technology, including mobile devices, to avoid or minimise any indirect costs of accessing case materials.

Taking into account particular needs of vulnerable suspects and accused persons more effectively

FRA's findings show that most Member States' laws contain general references to the needs of persons with disabilities and children. However, national legislators rarely introduce more detailed rules, and other policy documents provide little guidance on how to accommodate these needs. Examples of promising practices identified during this research include: transcribing written materials into braille for individuals with visual impairments; providing pre-prepared audio-files containing the text of the Letter of Rights; offering easy-to-read versions of such letters and of other written information about rights; and using letters of rights that are specifically adapted for children.

FRA Opinion 9

While Directives 2010/64/EU and 2012/13/EU do not provide specific guidance on how to ensure that the needs of vulnerable suspects and accused persons are taken into account, EU Member States taking steps to ensure the protection of the rights of suspects or accused persons whose vulnerability affects their ability to follow proceedings and make themselves understood should ensure compliance with their international human rights law obligations. In particular, Member States should adhere to the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC) – and the interpretative elaborations made by the expert bodies monitoring these conventions. EU Member States are also encouraged to follow guidelines developed by the Council of Europe in this field, particularly its Guidelines on child-friendly justice. *In this context, the effective implementation of the new* Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings *will be essential. EU Member States are also encouraged to follow the guidance set out in the European Commission* Recommendation on the procedural safeguards for vulnerable suspected and accused persons in criminal proceedings *who are not able to understand and to effectively participate in such proceedings due to age, their mental or physical condition or disabilities.*

Introduction

The European Union's (EU) area of freedom, security and justice can only function properly if individuals receive a fair trial regardless of where in the EU proceedings take place. To ensure this, procedural rights in criminal proceedings must be effectively protected. Freedom of movement and the resulting increased mobility in the EU for study, travel or work purposes means there is a greater chance that people may find themselves involved in criminal proceedings in a country other than their own. According to Eurostat data, nearly 11 million criminal proceedings are brought to national courts in the EU every year, of which a proportion will involve persons who are foreign nationals (both EU and non-EU). It is important to make sure that individuals receive a fair trial – anywhere in the EU. For example, it is essential that all suspects and accused persons – both citizens and non-citizens – immediately receive information about their basic rights, as they can be vulnerable to intimidation and ill-treatment just after they have been arrested. It is naturally harder to follow criminal proceedings in a foreign country, especially without knowledge of the language of the proceedings. In addition, it is essential that vulnerable persons – for example, people with disabilities – who are suspected or accused of crime are identified and recognised as such, and that their special needs are taken into account appropriately in criminal proceedings to enable them to fully exercise their defence rights.

For mutual recognition instruments in the area of justice – such as the European Arrest Warrant – to work, judicial authorities in the Member States need to be able to trust each other's justice systems, namely that other national criminal justice systems guarantee minimum procedural safeguards for suspects and accused persons, whatever their nationality. The *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (Criminal Procedure Roadmap)* prompted several EU secondary law instruments in this context. These initiatives build on the rights laid down in Articles 5 and 6 of the European Convention on Human Rights (ECHR) and related case law of the European Court of Human Rights (ECtHR), as well as in Article 6 (3) of the Treaty on European Union (TEU) and Article 48 (2) of the Charter of Fundamental Rights of the European Union (Charter). The instruments cover different defence rights that together form part of the wider concept of the right to a fair trial.[1]

In response to a 2014 European Commission request in the context of the Criminal Procedure Roadmap, FRA looked at criminal procedural rights of suspects and accused persons across EU Member States covered by:

- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU);
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right of suspect or accused persons to information in criminal proceedings (Directive 2012/13/EU).

The right to translation and interpretation and the right to information allow suspects and accused persons to follow and actively participate in judicial proceedings – including cross-border proceedings – in accordance with existing international standards and guarantees. Although this research focuses on these two specific defence rights as per the European Commission request, these rights should always be seen in the context of all other defence rights, which together form part of the wider concept of the right to a fair trial. Figure 1 provides an overview of the directives and other measures setting out the scope and content of different defence rights included in the Criminal Procedure Roadmap.

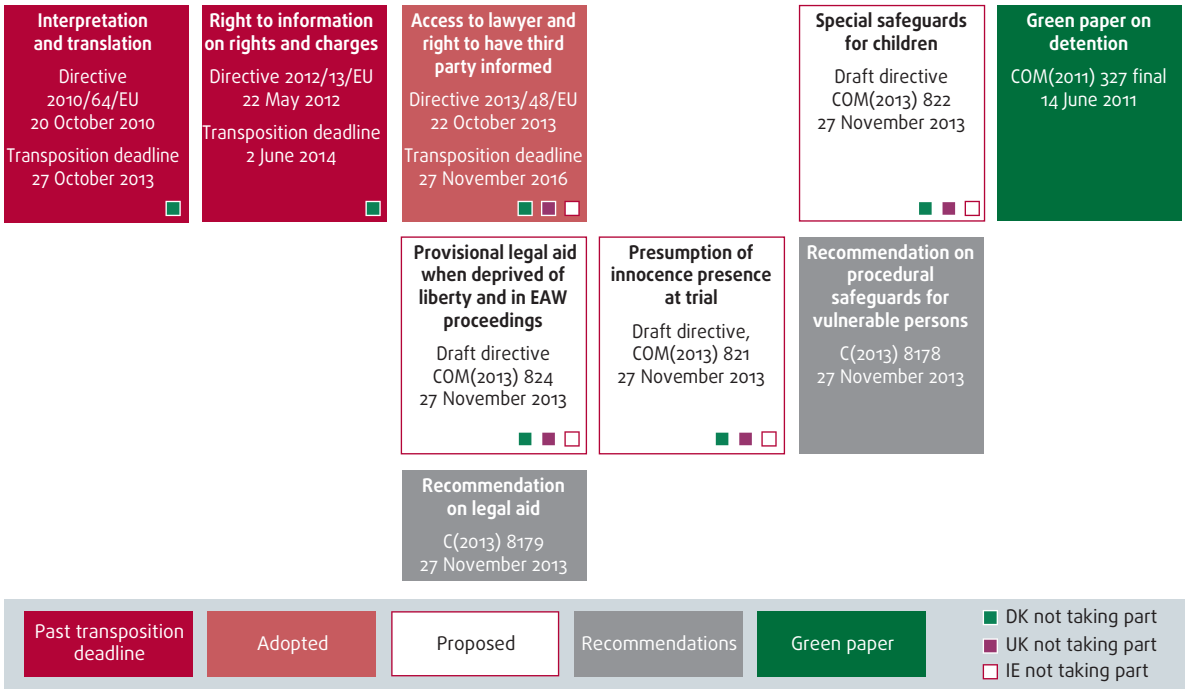
Directive 2010/64/EU lays down minimum rules on the right to interpretation and translation for those who do not speak or understand the language of the proceedings. It requires Member States to put in place interpretation services and to ensure the translation of essential documents and a quality control of the translation and/or interpretation. Directive 2012/13/EU lays down common minimum standards on the right to information with regard to certain rights, on a Letter of Rights on arrest, and on the right to information about the accusation (to be given to persons suspected or accused of having committed a criminal offence). EU Member States were required to transpose the two directives into national law by 27 October 2013 and 2 June 2014, respectively.

In response to the Commission's request, this report provides a comparative analysis of EU Member States' legal frameworks and policies in the context of these two directives and looks at relevant promising practices across the EU 28. The report aims to identify opportunities to further strengthen the consistency of the protection of the rights of suspected and accused persons in the EU.

The report is divided into four chapters. Chapter 1 provides an overview of existing European and international standards concerning suspects' and accused persons' rights to interpretation and translation and to

1 Sayers, D. (2014), pp. 733–760; Ruggeri S. (ed.) (2015), pp. 42–51; Cape, E. *et al* (2010).

Figure 1: Roadmap on procedural rights of suspects and accused persons in criminal proceedings



Note: *Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, adopted by the Council of the EU on 30 November 2009 and incorporated into the Stockholm Programme.*

Source: *FRA, 2015*

information in criminal proceedings. Chapters 2 and 3 present the core research findings on national laws and, where available, practices on the application of these rights and the fundamental rights implications for the persons concerned. Finally, given that both directives explicitly require Member States to take into account the needs of vulnerable suspects or accused persons, Chapter 4 focuses on the particular situation of persons with physical and intellectual disabilities and children suspected or accused of crime. The evidence presented in this report in relation to children could also inform relevant action that will be required at Member State level in light of new EU secondary law – namely, the directive on procedural safeguards for children suspected or accused in criminal proceedings.

Methodology

The purpose of FRA's research was to respond to the Commission's formal request to explore, through a comparative study, promising practices and opportunities in the application of the rights to interpretation, translation and information in criminal proceedings and the fundamental rights implications for the persons concerned across the EU 28. FRA also analysed the situation in Denmark – although not bound by either of the two directives – which is referred to where relevant, in particular where existing promising rules or practices could serve as inspiration for other Member States.

For simplicity's sake, the report uses 'pre-trial phase' to refer to all stages of criminal proceedings that take place before actual court hearings, i.e. all the investigative work conducted by the police and prosecutors or investigating judges/magistrates, as the case may be.

The main methods used to gather the evidence included:

- Desk research across the 28 EU Member States, carried out in 2015 by FRA's multidisciplinary research network, FRANET,[2] with respect to relevant legislation, policies and practices in each Member State. FRANET was in some cases requested to cross-check certain information with national criminal justice practitioners. The collected data also served to identify promising practices included in this report.
- An online questionnaire completed by national associations of legal interpreters and translators, who are also members of the European Legal Interpreters and Translators Association (EULITA). Twenty of such associations from 19 EU Member States completed the questionnaire. Quotes referred to in Chapters 2 and 4 come from these written submissions.

The data presented in this report are based on desk research on relevant legal provisions in place in EU Member States in September 2015 (certain data have been updated as of December 2015). It was outside the scope of this research to systematically map

2 More information on FRANET is available on FRA's website.

and analyse practices from the field – except for when national practitioners explicitly pointed these out to FRANET in the course of their analysis of relevant legislative provisions, and except for those practices highlighted by national associations of legal interpreters and translators. This is why references to these practices in the report are not systematic and are uneven across the EU Member States.

Related FRA research

The findings presented in this report should be read alongside other FRA evidence on access to justice, including the agency's work on victims of crime, and other FRA research focussing on the needs and rights of specific groups, such as children and persons with disabilities. A forthcoming FRA report scrutinises the transfer of persons sentenced or awaiting trial; it will complement the current study by further detailing the situation in Member States with respect to relevant EU criminal justice instruments and access to justice.

The efforts to strengthen suspected and accused persons' rights to information, translation and interpretation in criminal proceedings as set out in the Criminal Procedure Roadmap are clearly linked to the parallel process of improving these rights for victims of crime. The Victims' Rights Directive (2012/29/EU) provides victims with both the right to information and the right to interpretation and translation. FRA published research in this area in 2015, looking at support services for victims of crime; it included an opinion calling on EU Member States to "introduce measures that ensure that victims, at all stages of the process, have access to information about their rights and available support services, as well as to relevant information about the case. EU Member States should particularly consider putting in place an effective referral system that would guide victims through the support service system."[3]

FRA has researched a wide range of other issues related to specific categories of crime victims, such as violence against women, child victims, migrant victims and victims of hate crime.[4] In particular, FRA's research on children's participation in court proceedings as witnesses or victims should be read alongside Chapter 5 of this report, which covers the rights of vulnerable groups suspected or accused of crime.[5] In addition, the agency's work on persons with disabilities and the application of the UN Convention on the Rights of Persons with Disabilities (CRPD) is also relevant, as it places the report's findings into a wider context with respect to EU obligations.[6]

Finally, FRA has also been researching fundamental rights aspects of three cross-border EU instruments, adopted in 2008 and 2009, on: the transfer of prisoners between Member States, to facilitate rehabilitation by allowing them to serve their sentences 'closer to home'; probation – to encourage reassessment of the need for detention post-conviction; and alternatives to detention – both in post-trial settings and pre-trial, during ongoing criminal investigations or court proceedings. The report exploring applicable fundamental rights standards in the EU in this context – which focuses on social rehabilitation, consent, the nature of informing persons of cross-border transfers, and rights of victims – was developed in parallel to this one.[7]

3 For further comparative details on victims' right to information and on the availability of interpretation services free of charge in EU Member States, see FRA's website.

4 FRA (2016a).
5 FRA (2015a).
6 FRA (2015c).
7 FRA (2016b).

1 International and European standards

1.1. United Nations and Council of Europe

Directives 2010/64/EU and 2012/13/EU set minimum rules on the rights to translation, interpretation, and information of suspected and accused persons. EU Member States can extend the rights set out in these directives to provide a higher level of protection. The level of protection should never fall below the standards provided by the ECHR or relevant obligations under instruments of international law to which EU Member States are party.[8] Table 1 provides an overview of core instruments and relevant provisions.

Table 1: Binding international and European instruments on the rights to interpretation, translation and information in criminal proceedings

Council of Europe		
Name of instrument	*Article number and title*	*Text of the article*
European Convention on Human Rights (1950)	*Article 5: Right to liberty and security*	2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
	Article 6: Right to a fair trial	1. Everyone charged with a criminal offence has the following minimum rights: a. To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; b. To have adequate time and facilities for the preparation of his defence; [...] e. To have the free assistance of an interpreter if he cannot understand or speak the language used in court.
Framework Convention for the Protection of National Minorities (1995)	*Article 10(3)*	The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

8 A general overview of core international obligations taken on by the EU and its Member States is available on FRA's website. The overview looks at their formal acceptance of international human rights instruments, as well as at results of international- and national-level monitoring linked to these instruments.

United Nations		
Name of instrument	*Article number and title*	*Text of the article*
Universal Declaration of Human Rights (1948)	*Article 11(1)*	Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defence.
International Covenant on Civil and Political Rights (1966)	*Article 9*	Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
	Article 14	2. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; b. To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...] f. To have the free assistance of an interpreter if he cannot understand or speak the language used in court.
Convention on the Rights of the Child (1989)	*Article 40(2)(b)*	Every child alleged as or accused of having infringed the penal law has at least the following guarantees: ii. To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; [...] vi. to have the free assistance of an interpreter if the child cannot understand or speak the language used.
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	*Article 18*	1. Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...] 3. In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees: a. To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them; b. To have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing; [...] f. To have the free assistance of an interpreter if they cannot understand or speak the language used in court.
Convention on the Rights of Persons with Disabilities (2006)	*Article 13: Access to justice*	States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

Note: *More information on the Convention on the Rights of the Child is available on the website of the United Nations Office of the High Commissioner for Human Rights (OHCHR).*

Source: *FRA, 2015*

Right to translation and interpretation

Article 6 (3) (e) of the ECHR guarantees the right to the free assistance of an interpreter for translation or interpretation of all documents or statements in the proceedings that are necessary for the accused to understand to benefit from a fair trial.[9] It applies both to oral statements made at trial hearings and to documentary material and pre-trial proceedings.[10] The ECtHR has ruled that interpretation of the proceedings is required because the right to a fair trial, which includes the right to participate in the hearing, requires that the accused be able to understand the proceedings and to inform their lawyer of any point that should be made in their defence.[11] The Council of Europe's (CoE) rules on the use of remand in custody provide that accused persons must have adequate interpretation services when they are before a judicial authority deciding on remand custody.[12] The United Nations (UN) Human Rights Committee has stated that "in cases of an indigent defendant, communication with counsel might only be assured if a free interpreter is provided during the pre-trial and trial phase."[13]

According to Article 6 (1) (b) of the ECHR, every accused shall have "adequate facilities" to prepare their defence, which includes access to documents and evidence that the prosecution plans to use against the defendant in court and any exculpatory evidence that would assist in the defence. This does not require a written translation of all items of written evidence or official documents in the proceedings. An oral translation of a document or a translation of essential excerpts of the document may suffice. Accused persons whose mother tongue differs from the official court language are not entitled to the free assistance of an interpreter if they know the official language sufficiently well to defend themselves effectively.[14] Article 6 (3) (e) of the ECHR does not cover relations between the accused and their counsel; it only applies to relations between the accused and judges.[15] Defendants are responsible for the situation with their counsel and how well they understand each other in the preparation of the defence.

The right to an interpreter may be waived, but this must be the decision of the accused, and not of his or her lawyer.[16] This decision can only be taken if the individual clearly understands the charges, so that he or she can consider what is at stake in the proceedings and assess the advisability of such a waiver.[17] The waiver of rights must be established in an unequivocal manner and be attended by minimum safeguards.[18] According to ECtHR case law, "neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance." [19]

In *Harvard v. Norway,*[20] the United Nations Human Rights Committee (UN HRC) held that even if an accused does not speak the language of the court, if their lawyer does speak that language, it may be sufficient that documents are made available to counsel, provided counsel and the accused have means to communicate with each other, with or without an interpreter. This differs from the minimum standards set by the ECtHR, which – as noted above – requires interpretation of the proceedings because the accused must be able to inform their lawyer of any point that should be made in their defence.[21]

The UN HRC discusses criminal procedural rights in detail in its General Comments on *The Right to Equality before Courts and Tribunals and to a Fair Trial*[22] and on *Administration of Justice*.[23] In 2015, following a request from the UN HRC, the UN Working Group on Arbitrary Detention published its final text of the "Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before a Court".[24] Several of these principles mention using interpreters and translators so that the accused may understand decisions made relating to them. For example, Principle 30(3) states that "where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter".

9 ECtHR, *Luedicke, Belkacem and Koc v. Germany,* No. 6210/73, 6877/75, 7132/75, 10 March 1980; ECtHR, *Ucak v. the United Kingdom,* No. 44234/98, 24 January 2002; ECtHR, *Hermi v. Italy*, No. 18114/02, 18 October 2006, para. 69; ECtHR, *Lagerblom v. Sweden*, No. 26891/95, 14 April 2003, para. 61.
10 ECtHR, *Kamasinski v. Austria,* No. 9783/82, 19 December 1989, para. 74; *Hermi v. Italy*, No. 18114/02, 18 October 2006.
11 ECtHR, *Kamasinski v. Austria,* No. 9783/82, 19 December 1989, para. 74; *Cuscani v. United Kingdom,* No. 32771/96, 24 September 2002, para. 38.
12 Council of Europe, Committee of Ministers (2006).
13 UN, Human Rights Committee (HRC) (2007).
14 ECtHR, *K v. France*, No. 10210/82, 7 December 1983; UN, HRC (1990), para. 10.2.
15 ECtHR, *X v. Austria,* No. 6185/73, 29 May 1975, DR 2, p. 68.
16 ECtHR, *Kamasinski v. Austria*, No. 9783/82, 19 December 1989, para. 80.
17 ECtHR, *Baytar v. Turkey*, No. 45440/04, 14 October 2014.
18 ECtHR, Şaman v. Turkey, No. 35292/05, 5 April 2011; *Pishchalnikov v. Russia,* No. 7025/04, 24 September 2009.
19 ECtHR, *Salduz v. Turkey* [GC], No. 36391/02, 27 November 2008, para. 59.
20 UN, HRC (1994), para. 9.5.
21 ECtHR, *Kamasinski v Austria,* No. 9783/82, 19 December 1989, para. 74; ECtHR, *Cuscani v. United Kingdom,* No. 32771/96, 24 September 2002, para. 38.
22 UN, HRC (2007).
23 UN, HRC (1984).
24 UN, General Assembly (2015).

Right to information

As observed by the ECtHR, defendants who do not understand all the information provided are in a particularly vulnerable position.[25] The right to information can be broken down into different elements: the right to be informed of procedural rights, including when deprived of liberty; the right to detailed information about the accusation; and the right to access case materials.

Article 6 of the ECHR does not explicitly provide the right to be informed of one's rights. However, ECtHR case law provides some guidance on what national authorities need to tell suspects or accused persons about their procedural rights. The ECtHR has held that authorities have a positive obligation to inform the accused of their right to legal representation. A passive approach – where law enforcement waits for the accused to claim their right – is insufficient, and they must actively ensure that the accused understand their right to legal assistance and legal aid, as well as their right to remain silent.[26]

At the UN level, Article 9(2) of the ICCPR provides that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him".[27] Similarly, Article 14(3)(a)requires informing individuals charged with a criminal offence of the nature and cause of the criminal charges promptly and in a language they understand. The UN HRC has interpreted Article 14 as requiring charges to either be stated in writing or first stated orally and later confirmed in writing.[28]

The ECtHR has not issued an exhaustive list of the rights that should be mentioned to an accused or suspected person, nor has it decided on the form of the notification, which may vary depending on the circumstances of the case. According to the ECtHR, the minimum information to be provided to defendants is that they have the right to remain silent and cannot be obliged to contribute to their incrimination. Additionally, the presence of a lawyer serves to better inform the accused of their rights and so this right receives high priority.[29]

Authorities have a duty to give an accused reasons for being suspected of a crime. The information must include the specific criminal act, the legal basis on which the suspicions are founded and evidence-based reasons for suspecting them. This information should be made clear promptly, either on arrest or during the course of interrogation.[30] It is not enough to cite the law under which the accused is arrested. The information is seen as sufficient if it covers the essential legal and factual basis of the arrest and allows the suspect to apply to a court to challenge the lawfulness of the arrest.[31]

When an accused is detained, relevant and sufficient reasons must be given to justify detention.[32] The usual reasons for detaining an accused before trial are the risk that the accused could obstruct proceedings, abscond or re-offend.[33] Under the UN Principles on Arrest and Detention, a person deprived of liberty has the right to be informed – in a language and a means, mode or format that the detainee understands – of the reasons justifying the deprivation of liberty; the available judicial avenue to challenge the arbitrariness and lawfulness of the deprivation of liberty; and the right to bring proceedings before court and to obtain without delay appropriate and accessible remedies.[34]

An accused has the right to adequate time and facilities for the preparation of their defence.[35] The ECtHR has interpreted this right as requiring the authorities to inform the accused promptly and in detail of the nature and cause of the accusation against them in order to organise their defence. The information must be delivered in a language the accused understands, which means making accommodations for foreign nationals and for children or other vulnerable people.[36]

The right of suspects or accused persons to access evidence in their case files is based on the right to an adversarial trial, as laid down in Article 6 of the ECHR. The accused and their defence team have the right to access case files held by the authorities and the evidence that may be presented against them in court to prepare a coordinated defence. This right applies throughout the criminal process: from pre-trial hearings to decisions on remand in police custody to full criminal trial proceedings.

The prosecution as well as the defence must be given the opportunity to have knowledge of, and comment on, the observations filed and the evidence adduced by

25 ECtHR, *Salduz v. Turkey* [GC], No. 36391/02, 27 November 2008, para. 54.
26 ECtHR, *Panovits v. Cyprus*, No. 4268/04, 11 December 2008, para. 72; *Padalov v. Bulgaria*, No. 54784/00, 10 August 2006, paras. 54–56.
27 UN, HRC (2014).
28 UN, HRC (2007).
29 ECtHR, *Pishchalnikov v. Russia,* 24 September 2009, paras. 78–79.
30 ECtHR, *Fox, Campbell and Hartley v. the United Kingdom,* No. 12244/86, 12245/86, 12383/86, 30 August 1990; ECtHR, *Murray v. the United Kingdom,* No. 14310/88, 28 October 1994; ECtHR, *Dikme v. Turkey*, No. 20869/92, 11 July 2000.
31 ECtHR, *HB v. Switzerland,* No. 26899/95, 5 April 2001; ECtHR, *Murray v. the United Kingdom,* No. 14310/88, 28 October 1994.
32 European Convention on Human Rights (ECHR), Art. 5(3).
33 ECtHR, *Boicenco v. Moldova*, No. 41088/05, 11 July 2006; ECtHR, *Mamedova v. Russia*, No. 7064/05, 1 June 2006.
34 UN, General Assembly (2015).
35 ECHR, Art. 6(b); Charter of Fundamental Rights of the European Union, Art. 47–48; International Covenant of Civil and Political Rights (ICCPR), Art. 14(b).
36 ECtHR, *Brozicek v. Italy*, No. 10964/84, 19 December 1989.

the other party.[37] When the prosecution has submissions in support of detaining the person on remand, these must be communicated to the person or their lawyer, who must also be afforded the opportunity to comment on the prosecutor's submission.[38] Where there is a delay in making the case file available to the accused and their lawyer, the court assesses whether there is a violation by examining whether the delay caused a hindrance or an obstruction to the overall preparation of the defence.[39] Appropriate access to the case file and use of notes and copies of important documents are important guarantees of a fair trial.[40]

The ECtHR expressly referred to the directive on the right to information in *A.T. v. Luxembourg,* which dealt with access to the case file.[41] The case involved a person arrested under a European Arrest Warrant (EAW), and centred on the person's right to a fair trial under Article 6 of the ECHR in the course of criminal proceedings. The ECtHR found that the applicant's lack of access to the case file prior to his first appearance before the investigating judge did not violate Article 6, because the provision does not guarantee unlimited access to the file in situations where national authorities have sufficient reasons, relating to protecting the interests of justice, not to undermine the effectiveness of their enquiries. However, the ECtHR found that the absence of a lawyer during the applicant's initial interrogation by the police, as well as the applicant's inability to communicate with his lawyer prior to his first appearance before the investigating judge, did violate Article 6 ECHR.

Access to the case file may be restricted on public interest grounds in limited circumstances, but the ECtHR has found that these restrictions must have a lawful basis and be appropriate for, and proportionate to, achieving their function. Restrictions may be justified, for example, by national security concerns, assuring the safety of witnesses, or keeping secret law enforcement practices. The prosecution cannot decide to withhold certain relevant evidence without notifying or seeking the consent of a judge.[42] It is the role of the judicial body to assess the evidence and, balancing the public interest with the rights of the accused, to test for proportionality.[43] The court will scrutinise the procedure with the aim of upholding the equality of arms and ensuring that there are safeguards to protect the rights of the accused.[44] The accused should be allowed to participate in the decision-making process as fully as possible.[45] In some instances, authorities can withhold only certain documents with the sensitive information provided accompanied by adequate procedural guarantees and sufficiently justified.[46] The accused can be given indirect access to the file through their representatives.[47]

The right to information should also be seen in a wider context of equality and the right not to be discriminated against on grounds of membership of a minority (guaranteed by Article 21 of the EU Charter). According to Article 10(3) of the CoE Framework Convention on the Protection of National Minorities, ratified by most EU Member States, every person belonging to a national minority has to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her – and has the right to defend him-/herself in this language, if necessary with the free assistance of an interpreter. The Advisory Committee under the Framework Convention has repeatedly noted that, "while adequate legal provisions may exist, this right is often not systematically implemented because of inadequate financial resources and/or a lack of qualified interpreters. This is particularly the case for the languages of numerically smaller minorities". The Advisory Committee has consistently "encouraged the authorities to take all necessary measures to ensure that minority language rights in the judicial system are fully safeguarded, including as regards investigative and pre-trial stages".[48]

Vulnerable groups and fair trials

The general obligation to protect vulnerable individuals is also recognised in public international law. For example, the preamble to the Convention on the Rights of the Child (CRC)[49] refers to the "need to extend particular care to the child" and points out that various international instruments recognise the need to afford special protection to children. The Court of Justice of the European Union (CJEU) has recognised that the CRC has special status in EU law because it is a treaty ratified by all EU Member States and is considered to be part of the general principles of EU law.[50] The Committee on

37 ECtHR, *Garcia Alva v. Germany*, No. 23541/94, 13 February 2001, para 39.
38 ECtHR, *Niedbala v. Poland*, No. 27915/95, 4 July 2000.
39 ECtHR, *Padin Gestoso v. Spain* (dec.), No. 39519/98, 8 December 1998.
40 ECtHR, *Moiseyev v. Russia*, No. 62936/00, 9 October 2008, paras. 215–217.
41 ECtHR, *A.T. v. Luxembourg*, No. 30460/13, 9 April 2015.
42 ECtHR, *Rowe and Davis v. the United Kingdom* [GC], No. 28901/95, 16 February 2000, para. 63.
43 ECtHR, *PG and JH v. the United Kingdom*, No. 44787/98, 25 September 2001, para. 71.
44 ECtHR, *Natunen v. Finland,* No. 21022/04, 31 March 2009; ECtHR, *Dowsett v. the United Kingdom,* No. 39482/98, 24 June 2003; ECtHR, *Mirilashvili v. Russia*, No 6293/04, 11 December 2008.
45 ECtHR, *Mirilashvili v. Russia,* No. 6293/04, 11 December 2008.
46 *Ibid.*
47 ECtHR, *Kremzow v. Austria,* No. 12350/86, 21 September 1993, para. 88.
48 Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2012), para. 59.
49 UN, Committee on Rights of the Child (1989).
50 CJEU, *Parliament v. Council*, C-540/03, 27 June 2006.

the Rights of the Child issued a General Comment on Juvenile Justice elaborating on the rights that children who find themselves subject to criminal investigation deserve.[51]

In addition, the UN General Assembly adopted a resolution on the Beijing Rules – The Standard Minimum Rules for the Administration of Juvenile Justice.[52] These rules guarantee basic procedural safeguards for children and reiterate that children deserve at least the same procedural rights as adults. The guidance documents recognise that children need additional safeguards – such as the presence of a guardian or information delivered in plain language so that a child understands the investigation and their rights. The Beijing Rules are non-binding and do not have the same monitoring system as international treaties. However, they do represent the minimum standards agreed on by a majority of UN Member States and may thus serve as an important source of interpretation of binding rules, such as those of the CRC.

The ECtHR has also repeatedly stated that "children and other vulnerable individuals, in particular, are entitled to effective protection from the State".[53] Acting under the European Social Charter, the European Committee of Social Rights has held that "[t]he criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly".[54] The CoE's recommendation on the European Rules for juvenile offenders subject to sanctions or measures[55] states that "[j]uveniles charged with disciplinary offences must be informed promptly and in a manner and language they understand of the nature of the accusation against them and be given adequate time and facilities to prepare their defence; be allowed to defend themselves in person or with the assistance of their parents or legal guardians or, when the interests of justice so require, through legal assistance".[56]

Another CoE recommendation – on police ethics – provides that police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups. Meanwhile, the CRPD, ratified by the EU, broadly aims to protect persons with disabilities' full enjoyment of all human rights and fundamental freedoms by setting out the reasonable accommodation requirement.[57]

Reference to the need to take into account the need of vulnerable persons can also be found in other international human rights instruments. For instance, the UN HRC interpreted Article 9 (2) of the ICCPR – which requires informing arrested individuals of the reasons for their arrest and of any charges against them – as follows in the context of vulnerable persons:

"For some categories of vulnerable persons, directly informing the person arrested is required but not sufficient. When children are arrested, notice of the arrest and the reasons for it should also be provided directly to their parents, guardians, or legal representatives. [...] For certain persons with mental disabilities, notice of the arrest and the reasons should also be provided directly to persons they have designated or appropriate family members. Additional time may be required to identify and contact the relevant third persons, but notice should be given as soon as possible".[58]

1.2. European Union

As noted in Section 1.1, Article 6(3) of the ECHR contains a list of minimum defence rights that form part of the wider concept of the right to a fair trial (Article 6(1) of the ECHR). These rights are reflected in Article 48(2) of the EU Charter. In EU secondary law, the rights have been further articulated through a series of directives as part of the Criminal Procedure Roadmap (see Figure 1).

Directives 2010/64/EU and 2012/13/EU were the first two instruments initiated under the Criminal Procedure Roadmap. Directive 2010/64/EU was adopted on 20 October 2010 and its implementation deadline expired on 27 October 2013. Directive 2012/13/EU was adopted on 22 May 2012; its implementation deadline expired on 2 June 2014. Pursuant to its specific opt-out regime, Denmark is not bound by either directive.[59]

Directives 2010/64/EU and 2012/13//EU apply to criminal proceedings as a whole – from the investigation phase until the final decision. Unlike the ECHR and relevant case law (see Section 1.1),[60] however, they do not apply to mere "petty offences". When minor offences are involved that are dealt with by courts that do not have jurisdiction in criminal matters, but the sanction

51 UN, Committee on the Rights of the Child (2007).
52 UN, General Assembly (1985); see in particular Art. 7(1).
53 ECtHR, *X and Y v. the Netherlands*, 26 March 1985, Series A No. 91, pp. 11–13, paras. 23–24 and 27; ECtHR, *August v. the United Kingdom* (dec.), No. 36505/02, 21 January 2003; and, more recently, ECtHR, *Bouyid v. Belgium*, No. 23380/09, 28 September 2015.
54 Council of Europe, Committee of Social Rights (2001).
55 Council of Europe, Committee of Ministers (2008).
56 Council of Europe, Committee of Ministers (2013); Council of Europe, Commissioner for Human Rights (2009).
57 UN, Committee on the Rights of Persons with Disabilities (2006), Art. 2.
58 UN, HRC (2014).
59 Treaty on European Union and the Treaty on the Functioning of the European Union (consolidated versions), Protocol (No 16) on certain provisions relating to Denmark, OJ C 326, 26 October 2012, Art. 1 and 2.
60 ECtHR, *Öztürk v. Germany*, No. 8544/79, 21 February 1984.

imposed can be appealed to a court with jurisdiction in criminal matters, the directives only apply to the appellate proceedings before the latter court.[61] The directives do not specify which cases qualify as "minor", leaving room for some variation in Member States' implementation of these rights.[62]

In 2015, the CJEU delivered its first judgment dealing with Directive 2010/64/EU and Directive 2012/13/EU.[63] *Criminal proceedings against Gavril Covaci* concerned the interpretation of German legal provisions imposing fines for minor offences through written penalties in light of the two directives. The CJEU stated that the Directive on the right to interpretation and translation does not prevent national law from requiring the written opposition to such penalty orders to be drafted in the national language, even when the accused person does not speak it – given that the individual could also present the opposition by other means, e.g. orally and through the assistance of an interpreter. With respect to the Directive on the right to information, the CJEU found that provisions requiring the accused to mandate a resident of the Member State in which the offence was committed to receive notification of the penalty order on the person's behalf were compatible with this principle. However, the law cannot be read to mean that the two-week term for opposing the order runs from notification; instead, it must be interpreted as meaning that the term runs from the date on which the accused actually became aware of the order – to allow the person to benefit from the full two-week term for preparing the defence.

In June 2016, the CJEU released a preliminary ruling on the interpretation of the Directive on the right to interpretation and translation in *Criminal proceedings against István Balogh*. The question put before the CJEU was how to define 'criminal proceedings' for the purposes of Directive 2010/64/EU and how to apply the directive to a special procedure under Hungarian law pursuant to which foreign convictions can be recognised in Hungary. According to the CJEU, the directive is not applicable to such a national special procedure, especially one which involves neither a new assessment of the facts nor of the criminal liability of the convicted person. Its only purpose was to accord to the judgment of a foreign court the same status it would have had if it had been delivered by a Hungarian court. Translation was not necessary to protect the convicted person's rights, including the right to a fair hearing or the right to effective judicial protection.[64]

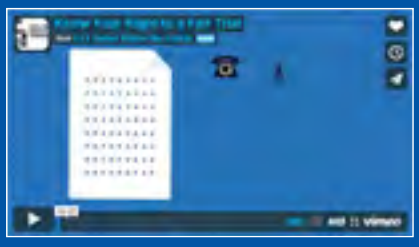
61 Directive 2010/64/EU, Art. 1(3); Directive 2012/13/EU, Art. 2(2).
62 Roebroeck, H. (2014).
63 CJEU, C-216/14, *Criminal proceedings against Gavril Covaci*, 15 October 2015; Ruggeri, S. (2016), pp. 43–45.
64 CJEU, C-25/15, *Criminal proceedings against István Balogh*, 9 June 2016.

Promising practice

Providing information on rights protected by EU directives in an accessible manner

Know Your Right to a Fair Trial: educational video by JUSTICIA

The 'Know Your Rights' project includes an educational animation on the right to a fair trial, produced by the JUSTICIA European Rights Network. It explains the procedural rights of suspects and accused persons in criminal proceedings granted by three EU directives (on the right to interpretation and translation, the right to information, and the right to access a lawyer). The video aims to provide suspects and accused persons across Europe with the knowledge and tools they need to access the justice system and ensure their rights are upheld, with the ultimate goal of securing effective access to justice for all. The video is also intended to be a useful tool for all key stakeholders within the criminal justice system, including the police, legal practitioners, and governmental departments.



Source: JUSTICIA, Know your right to a fair trial, video, available on the network's website.

Online training by Fair Trials

Fair Trials, a human rights organisation, launched a series of innovative free e-training courses designed to educate lawyers about the enforcement of EU criminal law in domestic criminal proceedings, and provide a practical guide to the EU directives on the right to translation and interpretation, and the right to information, in criminal proceedings. The organisation also published dedicated practitioner toolkits for both directives.

Source: Fair Trials Europe, Online training; Roadmap Practitioner Toolkit: Interpretation and Translation Directive; and Roadmap Practitioner Toolkit: Right to Information Directive, March 2015.

Promising practice

Assessing implementation of the three procedural safeguard directives

The Council of Bars and Law Societies of Europe and the European Lawyers Foundation published a report that provides an assessment by defence practitioners of the implementation of the following three directives adopted under the Criminal Procedure Roadmap:

- Directive 2010/64 on the right to interpretation and translation;
- Directive 2012/13 on the right to information; and
- Directive 2013/48 on the right of access to a lawyer.

The report is part of the TRAINAC project, which was funded by the EU's Justice Programme, and lasted from April 2015 to April 2016. The 80-page report analyses the three directives and identifies good practices and recommendations. The report's annexes, which contain the original responses to the questionnaires, total a further 270 pages.

Source: Council of Bars and Law Societies of Europe (CCBE) and the European Lawyers Foundation, TRAINAC, available on CCBE's website.

1.2.1. Directive 2010/64/EU

Directive 2010/64/EU provides for common standards with regard to translation and interpretation to help ensure that the rights of defence are fully exercised and so safeguard the fairness of proceedings.[65] The common minimum standards concern various points, outlined below.

Article 2 (1) specifies that interpretation must be free of charge for suspects or accused persons who do not speak or understand the language of the criminal proceedings (including during police questioning, essential meetings between client and lawyer, all court hearings, and any necessary interim hearings). According to Article 2 (4), a mechanism must be in place to assess whether suspects or accused persons speak and understand the language of the proceedings and whether they need an interpreter.

Pursuant to Articles 3 (1) and 3 (2), suspects or accused persons who do not understand the language of the proceedings must be provided with written translations of documents that are essential to ensuring that they are able to exercise their rights of defence and to safeguard the fairness of the proceedings. These include any decisions depriving a person of his/her liberty, any charges or indictments, and any judgments. Article 3 (3) specifies that authorities shall, in any given case, decide whether any other documents are essential. Article 3(7) provides that, as an exception, an oral translation or oral summary of essential documents may be provided on condition that this does not prejudice the fairness of the proceedings.

Pursuant to Articles 5, 3 (9) and 2 (8), interpretation and translation services should be of a quality sufficient to safeguard the fairness of the proceedings by ensuring that suspects or accused persons have knowledge of the case against them and are able to exercise their rights of defence.

Directive 2010/64/EU explicitly refers to the possibility of a waiver only in relation to the right to translation. It sets out applicable minimum requirements: namely, that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of a waiver, and that the waiver is unequivocal and voluntary.

Table 2 provides an overview of existing Council of Europe (CoE) standards stemming from ECtHR case law, and of emerging CJEU jurisprudence, regarding different aspects of the rights covered by Directive 2010/64/EU.

The directive goes further than CoE jurisprudence – for example, regarding the register of translators (Article 5 (2)) and training of judges, prosecutors and judicial staff (Article 6). The directive also goes further by requiring not only that the quality of interpretation and translation is assured by accreditation and professional qualifications, but also that interpreters and translators are independent. The directive also includes a list of documents that are essential and hence require translation.

Neither the CoE standards nor the EU standards designate a specific authority as being responsible for determining the need for translation and interpretation. As for overseeing the quality of translation and interpretation services, it appears that courts must assess the quality when the issue is raised. In ECtHR case law, the court checks for proof that the accused or their legal counsel raised objections concerning the quality of interpretation and translation during the trial.[66] The directive provides that the quality of translation and interpretation must be sufficient to "safeguard the fairness of proceedings", and the accused should be afforded the opportunity to lodge a complaint and have the interpreter and/or translator replaced.

65 Hertog, E. (2015).

66 ECtHR, *Kamasinski v. Austria,* No. 9783/82, 19 December 1989; *Andreou Papi v. Turkey*, No. 16094/90, 22 September 2009.

Table 2: ECtHR and CJEU case law on translation and interpretation rights covered in selected articles of Directive 2010/64/EU

CJEU case law	Issues covered	ECtHR case law
Ascertaining the necessity of interpretation, including timeline for providing interpretation (Article 2)		
	Assessment of language skills	*Cuscani v. the United Kingdom,* No. 32771/96, 24 September 2002 *K v. France*, No. 10210/82, 7 December 1983 *Hermi v. Italy* [GC], No. 18114/02, 18 October 2006
Defining 'essential documents' (Article 3)		
C-216/14, *Criminal proceedings against Gavril Covaci,* 15 October 2015 C-25/15, *Criminal proceedings against István Balogh,* 9 June 2016	Those which facilitate the exercise of the right to defence and allow participation in proceedings	*Hermi v. Italy* [GC], No. 18114/02, 18 October 2006
Quality of the translation and interpretation (Article 5)		
	Use of non-official, non-professional translators and interpreters may be sufficient to satisfy requirements	*Cuscani v. Italy,* No. 32771/96, 24 September 2002 *Gungor v. Germany (dec.),* No. 31540/96, 17 May 2001 *Kamasinski v. Austria,* No. 9783/82, 19 December 1989
Access to remedies (Articles 2(5) and 3(5))		
	Complaints that quality of the interpretation is not sufficient to safeguard the fairness of proceedings	*Kamasinski v. Austria,* No. 9783/82, 19 December 1989

Source: *FRA, 2015*

By guaranteeing not only translation into a specific language but even the option of having the whole procedure conducted in one's preferred language, EU law sometimes provides more language rights than international law.[67] However, this rare effect materialises only in those very few situations where a national system provides such a special language regime for a language in which an EU citizen (not a third-country national) is proficient.[68] Some EU Member States provide for legal procedures, including criminal procedures, to take place in the language of a minority residing in that state (or a region within that state). Due to EU law notions such as EU citizenship, freedom of movement and the freedom to provide services, such a 'language privilege' is also to be extended to EU citizens from other EU Member States who are in a situation comparable to that of the protected minority. They are to be considered to be in such a comparable situation if they speak the same language as the persons belonging to the protected minority group. No mother tongue or equivalent level is required as this would again result in indirect discrimination based on nationality.

1.2.2. Directive 2012/13/EU

Directive 2012/13/EU aims to ensure minimum standards on the right to information in criminal proceedings. It applies from the time competent authorities of a Member State make someone aware that they are suspected or accused of having committed a criminal offence, until the conclusion of the proceedings. It outlines common standards regarding various aspects of the right, several of which are discussed below.

According to Article 3(1) and (2), suspects or accused persons must be promptly informed – orally or in writing – about certain procedural rights listed in the directive, specifically:

- the right of access to a lawyer;
- any entitlement to free legal advice (and conditions for obtaining it);
- the right to be informed about the accusation;

67 See CJEU, C-274/96, *Horst Otto Bickel v. Ulrich Franz*, 24 November 1998, or, for an earlier example, CJEU, C-137/84, *Criminal proceedings against Robert Heinrich Maria Mutsch*, 11 July 1985.

68 The extension of the right to have proceedings conducted in a given language to EU citizens will not be absolute. For details of the so-called "Bickel/Franz-effect", see Toggenburg, G. N. (2012).

- the right to interpretation and translation (for individuals who do not understand the language of the proceedings);
- the right to remain silent.

In addition, Article 4(1) specifies that suspects or accused persons who are arrested must also be promptly informed in writing – in a so-called Letter of Rights – of:

- the right to access case materials;
- the right to have consular authorities and one person (such as a family member or employer) informed;
- the right to access urgent medical assistance;
- the maximum hours or days they may be deprived of liberty before being brought before a judicial authority;
- any possibility to challenge the lawfulness of the arrest, obtain a review of the detention, or request provisional release.

Pursuant to Article 4(4), the Letter of Rights must be drafted in simple and accessible language. Article 4(5) adds that it must be in a language that the suspect or accused person understands. If the Letter of Rights is not available in the appropriate language in the particular Member State, the suspect or accused person shall be informed of their rights orally in a language that they understand – and shall be provided with a Letter of Rights in a language they do understand without undue delay.

According to Articles 7(1) and (2), respectively, suspects or accused persons who are arrested must be given access to the documents relating to the specific case and to all material evidence held by the competent authorities. However, Article 7(4) notes that access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person – or if such a refusal is strictly necessary to safeguard an important public interest, such as where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted.

Table 3 provides an overview of existing CoE standards established by ECtHR case law, as well as of emerging CJEU case law, regarding different aspects of the rights covered by Directive 2012/13/EU.

The Letter of Rights as mandated by the directive is a new and specific measure not found in ECtHR case law. The ECtHR has said that individuals accused of crime must be informed of their rights. However, the form is not clearly defined and the only rights explicitly mentioned in the case law are the right to remain silent and the right to legal assistance – although this case law does not preclude the inclusion of other pertinent rights. One commonality between Directive 2012/13/EU and the case law of the ECtHR is that information on the rights needs to be clear and delivered in a manner the accused understands.[69]

69 ECtHR, *Saman v. Turkey*, No. 35292/05, 5 April 2011; ECtHR, *Panovits v. Cyprus*, No. 4268/04, 11 December 2008.

Table 3: ECtHR and CJEU case law on various aspects of rights granted in selected articles of Directive 2012/13/EU

CJEU case law	Issues covered	ECtHR case law
Providing information on procedural rights (Article 3)		
	When does the obligation to inform suspects and accused persons about their rights arise?	*Adolf v. Austria*, No. 8269/78, 26 March 1982 *Deweer v. Belgium*, No. 6903/75, 27 February 1980 *Eckle v. Germany*, No. 8130/78, 15 July 1982 *Engel and Others v. the Netherlands*, No. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, 8 June 1976
Providing information on procedural rights upon arrest (Article 4)		
	Extent of information provided	*HB v. Switzerland*, No. 26899/95, 5 April 2001
	Form of information provided	*Panovits v. Cyprus*, No. 4268/04, 11 December 2008 *Saman v. Turkey*, No. 35292/05, 5 April 2011
	Promptness of information provided	*Murray v. the United Kingdom*, No. 14310/88, 28 October 1994
Providing information on the accusation (Article 6)		
C-216/14, *Criminal proceedings against Gavril Covaci*, 15 October 2015	Form and extent of information provided	
The right of access to case materials (Article 7)		
	Type of material evidence that can be accessed and form of access	*Kremzow v. Austria*, No. 12350/86, 21 September 1993
	Applicable grounds for refusal and their review	*Rowe and Davis v. the United Kingdom* [GC], No. 28901/95, 16 February 2000 *Kremzow v. Austria*, No. 12350/86, 21 September 1993
Vulnerable persons (Article 3(2))		
	Accommodating needs of persons with hearing impairments	*Timergaliyev v. Russia*, No. 40631/02, 14 October 2008

Source: *FRA, 2015*

2 Right to interpretation and translation in Member States' laws

This chapter reviews to what extent national legal orders currently reflect relevant aspects of the right to interpretation and translation as provided by Directive 2010/64/EU. It also presents – where available – promising practices in this area. In particular, the chapter focuses on:

- ascertaining the necessity of, and timeline for, interpretation and translation – with a focus on the crucial pre-trial phase of proceedings;
- the notion of 'essential documents' with regard to the right to translation, and exceptions to this right (e.g. whether an oral translation or oral summary may be provided instead of a written translation);
- the extent to which Member States cover communications between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings;
- quality requirements for interpretation and translation services, including how authorities ensure interpretation into lesser known languages;
- available remedies to challenge failures and refusals to provide interpretation and/or translation as well as the low quality of provided interpretation and/or translation services.

The directive expressly requires Member States to bear the costs of interpretation and translation for persons who do not speak or understand the language of the proceedings. In general, almost all Member States cover these costs. However, there are exceptions. In **Belgium**, the state bears the cost of translations into French, Dutch or German (its official languages),[70] but suspected or accused persons must bear the cost of translations into any other languages.[71] In **Greece**, the National Commission for Human Rights – a national human rights institution – also highlighted existing limitations in the Greek legal regime: according to the Code of Criminal Procedure (Article 238 B), suspects/accused persons must cover the costs of translations of essential documents if they have the proven ability to bear them.[72]

Specific aspects of cost coverage across the EU Member States are further addressed in the context of its impact on the quality of translation and interpretation in Section 2.4, as well as in the context of the interpretation of communications between suspected or accused persons and their lawyers, covered in Section 2.3.

2.1. Providing interpretation and translation services in the pre-trial phase of criminal proceedings

This section focuses on how interpretation and translation services are secured in the early phases of criminal proceedings that take place before actual court hearings – i.e during the so-called pre-trial phase, which includes all the investigative work conducted by the police and prosecutors or investigating judges/magistrates, as the case may be.

2.1.1. Ascertaining the necessity of interpretation/translation

Article 2 (4) of the directive unequivocally states that "Member States shall ensure that a procedure or

70 Belgium, Act on the use of languages in judicial proceedings (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

71 *Ibid.*, Art. 38 (10).

72 Greece, National Commission for Human Rights (NCHR) (2015).

mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter."[73]

It does not specify what such a procedure should look like – although Recital 21 notes that such a procedure "implies that competent authorities verify in any appropriate manner, including by consulting the suspected or accused persons concerned, whether they speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter." This allows for wide interpretation by the Member States. In fact, systematic approaches to this issue appear to be lacking across the EU – many Member States do not have specific mechanisms or procedures in place, and ascertain the need for an interpreter in a rather ad hoc manner. On the other hand, some Member States do have clear criteria or guidelines in place –a promising practice more likely to guarantee the rights of suspected/accused persons in practice.

In terms of who has the responsibility for determining the need for interpretation during the pre-trial stage, in the vast majority of the 27 Member States bound by the directive, legislation specifies who is responsible for that determination. In most Member States (21), this is prescribed in the criminal codes, while in Luxembourg, this is addressed in a circular note of the Prosecutor General as a formal recommendation to prosecutors.[74] The remaining five Member States (the Czech Republic,[75] Hungary,[76] Malta,[77] Romania,[78] and Spain) do not explicitly set this out in law; instead, reference is made to established practices that are in place to clarify who is responsible for determining the need for interpretation. Typically, police officers, prosecutors or judges are responsible. For example, in Romania, in practice, it is left to the judge or prosecutor to ensure that a suspect's or accused person's right to interpretation is respected.[79]

Rules on how to establish the need for interpretation or translation are not always in place, and actual practice varies. In the vast majority of Member States, in practice, the person or authority responsible for determining the need for interpretation assesses this need during the investigation stage by asking the suspected or accused person questions – or even just the question, 'do you understand language X?' – to determine their ability to understand the language of the proceedings (i.e. the national language or one of the national languages of the country in which the proceedings are taking place). FRA's findings show that there is no clarity regarding the minimum level of understanding individuals must have – and below which they should be provided with interpretation and translation services. In its Recital 17, Directive 2010/64/EU only generally refers to the fact that interpretation and translation should be provided to allow individuals to 'fully' exercise their rights of defence, and to safeguard the fairness of the proceedings. Having a conversational level of understanding of a certain language, however, does not guarantee that a person will 'fully' be able to follow criminal proceedings, in which very technical language is often used. For example, criminal practitioners in Ireland have noted that it appears that interpreters are widely provided at police stations for accused or suspected persons who clearly have very little or no English. However, many cases involve accused or suspected persons with basic or even conversational English – to whom interpreters are not offered. In these cases, it remains incumbent on the individuals' solicitors to request an interpreter.[80]

In other countries, the approach may differ from case to case. For example, no specific practice appears to be established in Bulgaria, where some practitioners reported that authorities act depending on the specific situation at hand.[81]

Relevant national case law has started to develop, providing more detailed guidelines on this issue. For example, in Hungary, the Supreme Court[82] held that it is not enough to ask a person whether they understand the language of the proceedings. The competent authority/judge has to specifically ask whether the person prefers to use their native language during proceedings – individuals do not need to demonstrate whether they speak or understand Hungarian. To have the right to an interpreter, it is enough for persons to unambiguously state that they want to use their native language.[83] In Italy, the Judicial and Appellate Court of Milan developed a guideline document (in June 2014) to advise judges, public prosecutors, police and other institutions on how

73 Directive 2010/64/EU, Art. 2 (4).
74 Luxembourg, Circular note of the General Prosecutor concerning the implementation of the obligations arising from Directive 2010/64/EU on the right to interpretation and translation in criminal procedures while waiting for its transposition (*Note concernant l'exécution des obligations découlant de la directive 2010/64/UE relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales dans l'attente de la transposition de celle-ci*), 5 February 2015.
75 Czech Republic, representative from the Regional Directorate of the Police of the Capital of Prague.
76 Hungary, criminal lawyer and representative of the national police.
77 Malta, legal practitioners.
78 Romania, representative from the Prosecutor's Office attached to the Supreme Court.
79 *Ibid*.
80 Ireland, solicitor.
81 Bulgaria, prosecutor from the Analytical Unit of the Supreme Prosecutor's Office of Cassation.
82 Judicial Decision 203/2014 of the Criminal Department of the Supreme Court (*203/2014 számú Büntető határozat)* (not available online).
83 Hungary, representative of the national police; representative of secretary of the Deputy Secretary of State for Judicial Cooperation in the EU.

to guarantee the proper application of the legislative decree that implements Directive 2010/64/EU. The guidelines must be applied in all criminal proceedings held in Milan and include information on the procedure for assessing accused/suspected persons' knowledge of the Italian language.[84]

FRA's research identified several other promising practices in this area. For example, several Member States have clear, written criteria or guidelines in place to assess whether or not a person sufficiently understands the language of the proceedings. This includes the Netherlands, where a Public Prosecution Service directive specifies the assessment criteria to be followed: the suspect understands the questions asked and the statements communicated, is capable of expressing him/herself in his/her own words about the events he/she is interviewed about, and is capable of expressing nuances.[85] The Polish Prosecutor General has issued guidelines on verifying a suspect's understanding of Polish, with the aim of providing a clear and uniform mechanism to check whether a person speaks and understands it, or needs an interpreter. The guidelines are binding for all prosecutors. They specify that, where an individual is not a Polish citizen, a Polish-language proficiency check should be made in an interview prior to the hearing. The interview should be used to determine whether a suspect or accused person may have been able to develop knowledge of the Polish language due to family or personal relationships, or through other circumstances.[86]

Where it is determined that a person needs an interpreter, some countries have specific methods for identifying which language the suspected or accused person speaks and understands. To identify the suspect's or accused person's language in the United Kingdom (England and Wales), custody officers refer to posters kept near the custody desks or use the so-called Language Line Language Identification Card. When custody officers determine that a person requires interpretation services, they call the Language Line, via which someone provides initial interpretation by telephone to assist with the notification of rights and the decision to detain (the booking-in procedure).[87] Police in Scotland and Northern Ireland use similar methods.

2.1.2. Timeframe

Directive 2010/64/EU requires providing interpretation for suspected or accused persons during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings "without delay". The directive adds that "[w]here a certain period of time elapses before interpretation is provided, that should not constitute an infringement of the requirement that interpretation be provided without delay, as long as that period of time is reasonable in the circumstances." Member States shall also ensure that suspects or accused persons are provided with written translations of all documents that are essential "within a reasonable period of time".

In general – and partly as a result of the margin of discretion the directive gives on this issue – Member States' legislation does not indicate a strict or explicit time limit for providing interpretation or translation during police questioning or court hearings. In Hungary, for instance, there is no legally prescribed timeframe for the translation of documents, and responsible authorities agree on a time limit with the appointed translators. In practice, therefore, the timeframe within which translations are completed can vary from case to case.[88]

Many Member States specify in their laws only that interpretation or translation must be available "within a short period of time" (for example, interpretation services in Austria);[89] "within a reasonable time frame" (translation services in Austria,[90] Cyprus,[91] France,[92] and Luxembourg,[93] and translation and interpretation services in Estonia);[94] "without delay" (interpretation

84 Diritto Penale Contemporaneo (2014), *D. Lgs. 4 marzo 2014 n. 32 in matera di interpretazione e traduzione nei procedimenti penali; prassi applicative*, 4 March 2014.
85 Netherlands, Public Prosecution Service (*Openbaar Ministerie*) (2013), Directive on the aid of interpreters and translators during the investigation in criminal cases (unofficial translation) (*Aanwijzing bijstand van tolken en vertalers in het opsporingsonderzoek in strafzaken*).
86 Poland, Guidelines issued by the Prosecutor General addressed to all prosecutors, 7 June 2013. The Helsinki Foundation for Human Rights (HFHR) obtained this document from the District Prosecution Office Białystok-Południe in Białystok in a written answer to questions of the HFHR, 27 March 2015. Representative from the District Prosecution Office Białystok-Południe in Białystok.
87 Blackstock, J. *et al* (2013).
88 Hungary, legal advisor of the Criminal Department of the Kúria.
89 Bachner-Foregger, H. (2014).
90 Austria, OGH (2013), 15Os157/12w, 24 April 2013.
91 Cyprus, Law providing for the right to interpretation and translation during criminal procedure (*Νόμος που προνοεί για το δικαίωμα σε διερμηνεία και μετάφραση κατά την ποινική διαδικασία*), N. 18(I)/2014, 19 February 2014, Art. 5(1) and 5(4).
92 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. D.594-8.
93 Luxembourg, Chamber of Deputies (*Chambre des députés*), Bill 6758 strengthening the procedural guarantees in criminal matters (*Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 23 December 2014, Art. 3-3. The Bill was introduced by the Ministry of Justice and was pending in the parliament during the period covered by this report.
94 Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Art. 10 (2) and (8).

services in Cyprus,[95] France,[96] Greece,[97] Lithuania,[98] Luxembourg,[99] and the United Kingdom);[100] "as soon as practicable" (interpretation services in Malta);[101] "promptly" (translation services in Croatia);[102] or "timely" (translation services in Italy).[103]

These terms are rarely defined in national legislation. For example, according to information provided by the Municipal State Attorney's office in Zagreb, in Croatia, interpretation of the term "promptly" depends on the specific circumstances of each case and its duration is neither defined in practice nor by internal rules.[104] With regard to Italy, one commentator noted that the failure to fix an explicit deadline for written translations that cannot be replaced by sight translation or summary sight translation risks lengthening translation times – which may conflict with the 'timely' requirement and is detrimental to a person's right to defend him/herself.[105] Meanwhile, in Greece, the Criminal Code provides that "[i]n view of translation of documents definitely requiring a substantive investment in working-hours, a deadline is set for the interpreter to hand over the translation. The deadline can be extended. If the time limit expires, the appointed translator is relieved and another one is appointed."[106]

In the future, domestic courts may clarify how these timeframes are to be defined and applied in practice. In the meantime, some Member States have developed guidelines on, or concrete practices regarding, how to apply these general timeframes during the pre-trial stage of criminal proceedings in relation to interpretation and translation of documents or, where the law does not stipulate a general timeframe, how to set a time limit for the provision of interpretation or translation in given cases.

For example, in **Latvia**, when interpretation services are provided by external service providers, the applicable timeframe is stipulated in the contract for the provision of the services to the police. This may specify, for example, that where the investigative action is urgent and unplanned, an interpreter must arrive within two hours. Permanent staff interpreters providing Russian-Latvian interpretation at police units are available 24 hours a day.[107] Deadlines for translations of documents are similarly specified in the contracts for translation, and take into account the size of the text and the degree of urgency.[108] The typical deadline for translations is within 15 working days. In particularly urgent cases, the deadline may be shortened.[109]

Promising practice

Prioritising and categorising documents

In Lithuania, translations are classified as 'very urgent' (these should be completed within the same day or even within several hours, and are assigned to one or several translations, depending on the material's length); 'urgent' (assigned to several translators); and of 'normal urgency' (assigned to one translator).

Source: Lithuania, Prosecutor General's Office, Order No. I-87 on the Organisation and Performance of Interpretations at the Prosecutor's Office of the Republic of Lithuania (Vertimų organizavimo ir atlikimo Lietuvos Respublikos prokuratūroje tvarkos aprašas, patvirtintas LR generalinio prokuroro įsakymu)*, 28 April 2014, para. 17.*

95 Cyprus, Law providing for the right to interpretation and translation during criminal procedure (*Νόμος που προνοεί για το δικαίωμα σε διερμηνεία και μετάφραση κατά την ποινική διαδικασία*) N. 18(I)/2014, 19 February 2014, Art. 4(2).

96 France, Code of Criminal Procedure (Code de procédure pénale), 2 March 1959, Art. D.594-11.

97 Greece, Art. 233 (1) of the Code of Criminal Procedure, as amended by Art. 2 (1) of Law No. 4236/2014 'On the transposition of the Directives 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (L280) and 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right of information in criminal proceedings (L142) and other provisions' (*Για την ενσωμάτωση των Οδηγιών 2010/64/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Οκτωβρίου 2010 σχετικά με το δικαίωμα σε διερμηνεία και μετάφραση κατά την ποινική διαδικασία (L280) και 2012/13/ΕΕ του Ευρωπαϊκού Κοινοβουλίουκαι του Συμβουλίου της 22ας Μαΐου 2012 σχετικά μετο δικαίωμα ενημέρωσης στο πλαίσιο ποινικών διαδικασιών (L142) και άλλες διατάξεις*), OG A' 33/11.2.2014.

98 Lithuania, Criminal Procedure Code (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 44 (providing that persons who are arrested or detained are informed without delay in a language that they understand on the reasons of their arrest or detention). The Order on Organisation of Interpretation also provides for interpretation without delay in certain cases.

99 Luxembourg, Chamber of Deputies, Bill 6758 strengthening the procedural guarantees in criminal matters, Article 3-2(3).

100 United Kingdom, HM Government (2014) Police and Criminal Evidence Act 1984(PACE) Code C: Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers (2 June 2014), para. 3.12.

101 Malta House of Representatives, Criminal Code, 10 June 1954, Chapter 9 of the Laws of Malta, Art. 355AC, 534AB and 534AC.

102 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*), Official Gazette (*Narodne novine*) Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13,145/13, and 152/14, 17 December 2014, Art. 8, para. 5.

103 Italy, Criminal Procedure Code (*Codice di procedura penale*), Art. 143, para. 2.

104 Croatia, Municipal State Attorney's Office in Zagreb (*Općinsko državno odvjetništvo u Zagrebu*), response to query No. A – 51/15, 17 June 2015.

105 Recchione, S. (2014), p. 10.

106 Greece, representative from the Athens Bar Association.

107 Latvia, senior inspector of the State Police.

108 Latvia, senior officer in court administration.

109 Latvia (2014), p. 33.

When deprivation of liberty is involved, national laws are usually much clearer in terms of the need to guarantee interpretation or translation as speedily as possible, given that the actual arrest and its length are usually strictly regulated in EU Member States. In Sweden, for example, interpretation must be provided in line with the rule providing that arrested or detained persons are not obliged to remain for questioning for longer than six hours. If it is particularly important for them to be available for further questioning, they are obliged to stay for a further six hours. Persons under 15 years of age are not obliged to remain for more than three hours – plus a further three hours if of extreme importance for the investigation. According to a government inquiry on transposing the directive into Swedish law, court or police interrogations are sometimes postponed if a need for an interpreter cannot momentarily be satisfied because of a lack of interpreters or a lack of sufficiently qualified interpreters.[110]

In the Netherlands, a suspect may be held for six hours before a police custody order is issued. It is possible to extend the detention by another six hours by way of a written extension order. The suspect must be informed orally of the content of this order, in a language they understand.[111] When the extension order expires, the suspect is released unless a police custody order is issued.

In Slovenia, certain rules apply when someone is detained for more than six hours. Authorities must appoint a court interpreter within 48 hours to provide the suspect with oral translations of all documents related to the decision on detention and relevant for a possible appeal of this decision, and to help the detained person communicate with their legal counsel.[112]

In the United Kingdom (Northern Ireland), when an arresting officer cannot establish effective communication with a person charged with an offence and there is doubt about their ability to hear, speak or understand English, arrangements must be made as soon as practicable for an interpreter to explain the offence and any information given by the custody officer.[113] The contract for face-to-face interpretation specifies that contractors should generally aim to provide an interpreter within 48 hours' notice, but occasionally a shorter notice period – as little as two hours – may be necessary to meet operational requirements. In emergency requests, contractors must arrive within two hours anywhere in Northern Ireland, wherever the need arises. Response times must take into consideration the numerous demands and obligations placed on the police – for example, legislative constraints in respect of detained persons and obtaining evidence and the investigation of serious crime.[114] Translations of statements made at police stations must be provided "in due course".[115] The Interpreting Services Contract states that contractors should be able to provide text translation and speech-to-text transcription within 48 hours.[116]

2.2. Notion of essential documents

Directive 2010/64/EU is seen as breaking new ground in defining 'essential documents' because it provides specific guidelines – in contrast to the much more general findings of the ECtHR on this issue (see Section 1.2.1). The directive sets out a clear right to written translation of 'essential' documents, defined in Article 3(2) as including "any decision depriving a person of their liberty, any charge or indictment, and any judgment."[117] It also mentions that other documents may be essential – this is something for authorities to decide on a case-by-case basis. However, the directive also recognises that, in exceptional cases, oral translations or oral summaries of essential documents can suffice, as long as this does not prejudice the fairness of the proceedings.[118] This is also supported by ECtHR case law.[119] While this is a rather minimalistic approach, the fact that a defendant has the right to a lawyer can help mitigate possible risks. This is especially true given that even translated legal documents can be difficult for laypersons to understand, meaning they will ultimately rely on their lawyer to fully comprehend these documents. At the same time, the fact that legal assistance must be made available should not affect an individual's right to receive important information in writing, and in a language they understand.

110 Sweden, Ministry of Justice *(Justitiedepartementet)* (2012).
111 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering),* Art. 61, para. 8.
112 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 1 January 2006, Art. 157 (6); Director General of the Police (*Generalni direktor Policije*), *Dodatne usmeritve ob uveljavitvi ZKP-M* (Additional guidelines on the implementation of CPA-M), 13 March 2015 (not publicly available, sent upon request by Senior Investigating Criminal Inspector – Specialist at the Criminal Police Directorate).
113 United Kingdom, HM Government (2015), Department of Justice for Northern Ireland Police and Criminal Evidence (Northern Ireland) Order 1989 Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 1 June 2015, paras. 3.7 and 13.9.
114 United Kingdom, representative from the Police Service of Northern Ireland.
115 United Kingdom, HM Government (2015), Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, para. 13.4(c).
116 United Kingdom, representative from the Police Service of Northern Ireland.
117 Directive 2010/64/EU, Art. 3(2).
118 Directive 2010/64/EU, Art. 3(7).
119 See, for example, ECtHR, *Kamasinski v. Austria*, No. 9783/82, 19 December 1989, and ECtHR, *Hermi v Italy* [GC], No. 18114/02, 6 November 2003, para. 70.

The following section focuses on Member States' approaches to providing translations and interpretation during the pre-trial and trial phases. It also discusses how the competent authorities ascertain whether oral translations or oral summaries of essential documents can be provided instead of written translations.

2.2.1. Translation of 'essential' and other documents

According to FRA's research, EU Member States can be grouped into two categories based on their approaches to essential documents in their laws (see Figure 2): 1) those that explicitly list the documents considered 'essential' in their national legislation (i.e. any decision depriving a person of their liberty, any charge or indictment, and any judgment – with a few going beyond the directive's list and deeming additional documents 'essential'), and 2) those that do not list 'essential' documents.

The majority of Member States – 22 out of 27 – explicitly list 'essential' documents in their national legislation. In accordance with Article 3(3) of the directive, in the great majority of these 22 Member States, competent authorities can decide that other documents are essential (pursuant to requests by suspected or accused persons or their legal counsel). The remaining five Member States bound by the directive – Belgium, Finland, Lithuania, Malta and Sweden (as well as Denmark, to which the directive does not apply) – do not appear to list essential documents in their legislation.

The above categorisation is based on law/legal provisions, and practice may differ. Some of the below examples will explore this.

It could be considered important for Member States' legislation to be specific with regard to which documents have to be translated – to ensure clarity and to help suspects and accused persons access all documents that are essential to ensuring that they can exercise their rights of defence and to safeguard the fairness of the proceedings in line with the directive.

However, it appears that several countries do not meet the directive's standards. For example, in Belgium, no legislation regulates 'essential' documents. In practice, interpreters may orally translate the documents that suspected or accused persons have to sign. Written translation is rarely provided. The Act on the Use of Languages in Judicial Proceedings only foresees translation into one of the three Belgian national languages, and not for other languages.[120] Each party has the right to request translation into other languages, but at his/her own cost. In Finland, the law states that "a document or a portion thereof that is part of the criminal investigation documentation and that is essential from the point of view of the matter shall be translated in writing within a reasonable period into the language of the party [...] if translation is necessary to ensure the right of the party". The only concrete document that the legislation specifically refers to is a decision on arrest.[121] Swedish criminal legislation includes a similarly general reference to the requirement to translate if a translation is essential for the accused person to protect their rights. But there is no explicit list or definition of what documents constitute essential documents.[122] In Lithuania, criminal legislation provides that only those documents that are delivered to the person have to be translated. However, documents are not delivered to the person concerned in all cases involving substantive limits on personal freedom. For instance, no legal provisions exist concerning the delivery of resolutions to assign arrest or home arrest to suspects or accused persons – meaning there is no obligation to translate those documents. This has prompted criticism from some civil society organizations in Lithuania.[123] The Criminal Code in Malta does not define or list essential documents and only generally refers to the fact that suspected or accused persons are entitled to translations of all documents. In practice, which documents are actually translated is largely decided on a case-by-case basis.[124]

At least four of the 22 Member States that list essential documents in their legislation – Croatia, the Czech Republic[125], Portugal[126] and Slovenia – appear to go further than the directive by listing additional documents as essential. For example, the list of documents that must be translated in Slovenia seems to be wider than what is set out in the directive. Legislation transposing

120 Belgium, Act on the use of languages in judicial proceedings (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 38.

121 Finland, Government Bill 63/2013 (*Hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/ Regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra laga*, HE 63/2013), p. 33.

122 Sweden, Code of Judicial Procedure *(Rättegångsbalk (1942:740),* Chapter 33, para. 9.

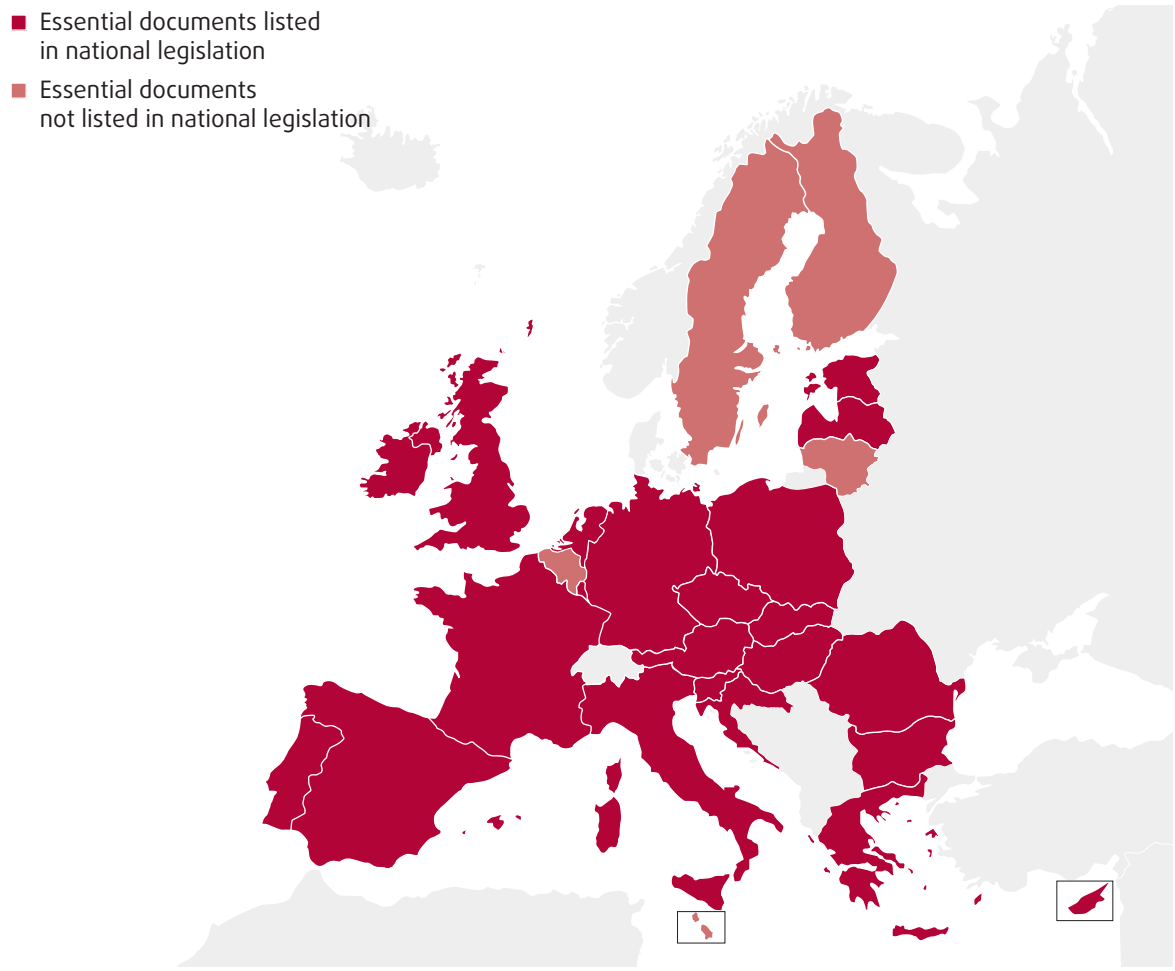
123 Lithuania, Human Rights Monitoring Institute (Žmogaus teisių stebėjimo institutas), Letter to the Minister of Justice (*Teisingumo ministrui*), 29 April 2013.

124 Malta, House of Representatives, Criminal Code, 10 June 1854, Chapter 9 of the Laws of Malta, Art. 534AD; information observed through professional practice and confirmed in consultation with legal practitioners.

125 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, paras. 28 and 160.

126 Portugal, Criminal Procedural Code (*Código de Processo Penal*), 17 February 1987, Art. 58 (4), 78, 183, 113 (10), 196 (1).

Figure 2: Listing of essential documents for translation in national legislation in EU Member States (except Denmark)



Source: *FRA, 2015*

the directive made very clear which documents must be translated, including: charges or indictments; summons; all decisions on the deprivation of liberty; judgements; and court decisions on the exclusion of evidence, on the rejection of motions to include certain evidence, and on the disqualification of judges.[127] The practice as to which documents have to be translated after the introduction of the legislation transposing the directive was not yet completely established at the time of research, but FRA's evidence indicates that judges tend to order translations of more documents than before – although it seems that this policy greatly depends on the individual judges.[128]

In Croatia, authorities provide suspects and accused persons in need of translation with written translations of: the Letter of Rights, the arrest warrant, the decision on the initiation of investigation, the order on evidence collection, the indictment, private charge, court summons, any court decisions reached after the indictment and before the final court ruling, and court decisions on legal remedies.[129] The State Attorney's office also almost always provides translations of other documents, such as documents imposing procedural requirements, documents against which there is a right to appeal, and documents providing certain procedural rights to the accused.[130] Although there is no legal obligation to translate such documents, according to information provided by the Municipal State Attorney's office, it is an established practice of the competent bodies to translate such documents.[131]

The list of essential documents during the pre-trial phase provided in the relevant legislation of the United Kingdom (England and Wales) is more detailed and goes beyond the minimal list included in Directive 2010/64/EU.

127 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 1 January 2006, Art. 8 (1).
128 Slovenia, criminal law judge.
129 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*) (2014), Art. 8, para. 5.
130 Croatia, Municipal State Attorney's Office in Zagreb (*Općinsko državno odvjetništvo u Zagrebu*), response to query No. A – 51/15, 16 March 2015.
131 *Ibid.*

It includes authorisations for detention before and after a charge is given by the custody and review officers; authorisations to extend detention without charge beyond 24 hours, given by a superintendent; warrants of further detention, issued by the magistrates' court; and any extensions of a warrant and the authority to detain someone in accordance with the directions in a warrant of arrest. The police must also translate written notices showing the particulars of the offences for which persons have been charged or been told that they might be prosecuted for; written interview records; and written statements made under caution. However, no such list of essential documents is provided for the trial phase of criminal proceedings. Instead, judges decide which documents are to be translated. On application or on their own initiative, courts may require written translations of any documents or parts thereof.[132] These generally include those needed by defendants to understand what is being said against them and to instruct their lawyers.[133] Northern Ireland's Courts and Tribunals Service also confirmed that there is no specific definition of essential documents in the courts, and that judges decide which documents are to be translated on a case-by-case basis.[134]

In Cyprus, legislation contains a list of documents that are essential and therefore have to be translated. However, legal practitioners pointed out some challenges when it comes to practice. For example, an elaborate document of rights has been drafted for use by the police to inform arrested persons of their rights in line with the applicable legislation.[135] In practice, however, the police hands arrested persons a document of rights that is significantly shorter (one page) and contains only basic information about the right to legal representation and other basic rights. The longer document is not yet used because it is still being translated into languages other than Greek, and the police engages interpreters to orally explain its contents to accused or suspected persons.[136]

Some national laws of countries that list essential documents do not appear to fully cover all types of documents listed in Directive 2010/64/EU. In Romania, for example, the law explicitly lists only indictments and final court decisions as essential documents that need to be translated.[137]

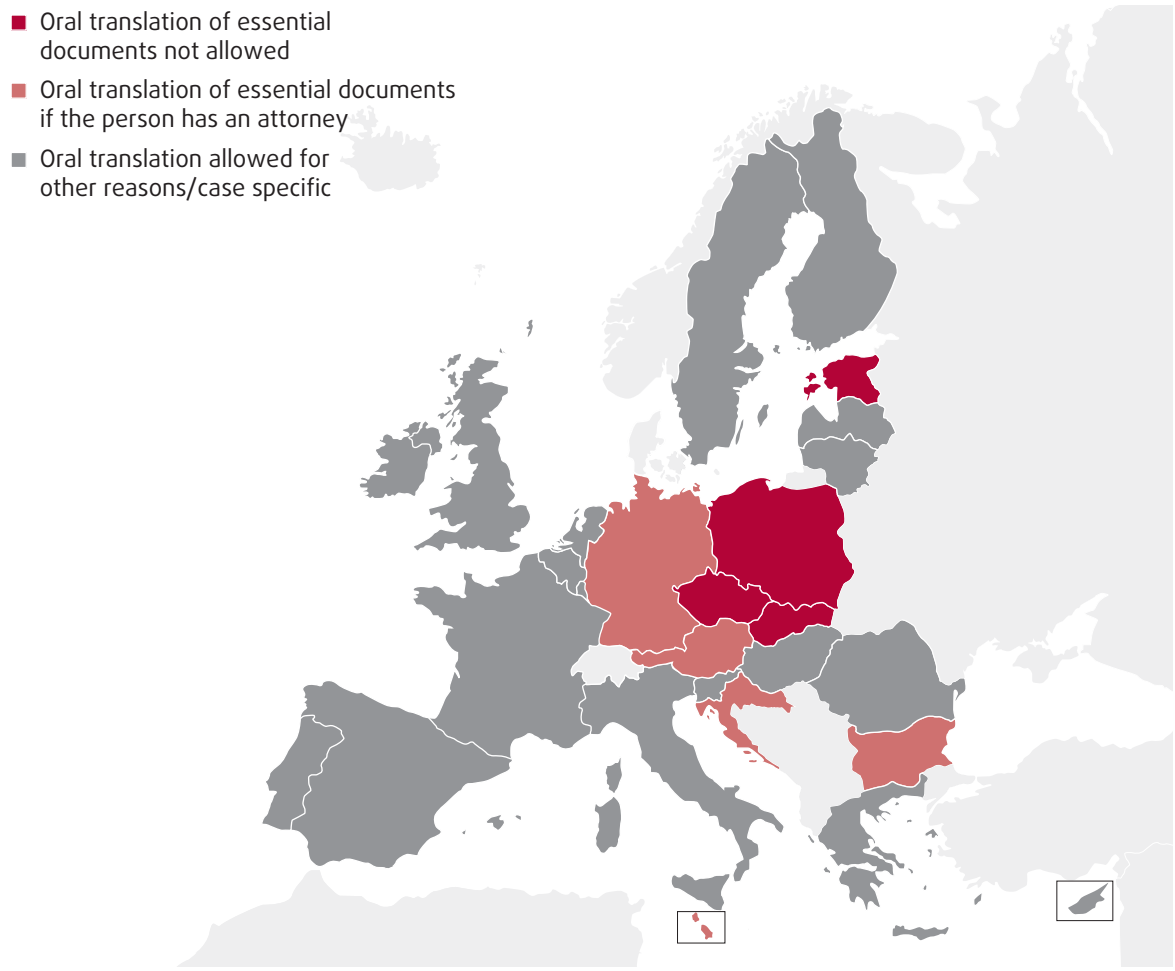
National court judgments provide some guidance on relevant domestic rules on essential documents and consequences for national authorities that do not comply with these rules. As a decision of the Supreme Court in the Netherlands shows, the failure of competent authorities to properly implement the directive and abide by its obligations to translate essential documents can have serious consequences (in addition to the obvious adverse effects on a person's right to a fair trial) – for example, overturned verdicts or delayed proceedings. In a 2015 decision involving a Romanian national who received a summons in Dutch only – a language he did not understand – the failure to provide a translation of the summons prompted the Supreme Court to invalidate the Court of Appeal's verdict. The Supreme Court held that since the person did not receive a translation and the Court of Appeal proceeded with its session, the resulting verdict was invalid.[138] In Italy, the Court of Cassation reviewed the validity of a judgment sentencing a Spanish-speaking defendant to 15 years in prison for international drug trafficking, because the judgment was not immediately translated. The Court of Cassation held that judgments that are not immediately translated are not invalid, but do extend the applicable appeal period, which does not begin to run until the person concerned takes delivery of the translated decision.[139]

2.2.2. Ascertaining whether oral translations or oral summaries of essential documents may be provided instead of written translations

Article 3(7) of the directive provides that "an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings". FRA's findings show that, for the most part, Member States provide only oral summaries of non-essential documents, and sometimes – in line with the directive – also of essential documents. According to practitioners, written translations of documents – such as indictments, judgments or detention decisions – are often more useful for suspects or accused persons than oral explanations of such documents.[140] However, time and budget constraints (among other things) sometimes lead authorities to opt for oral rather than written translations.

132 United Kingdom, HM Government (2014) Criminal Procedure Rules and Criminal Practice Direction (SI 2014/1610) (14 October 2014), rule 3.9(5)(c).
133 United Kingdom, representative from HM Courts and Tribunals Service.
134 United Kingdom, representative from the Northern Ireland Courts and Tribunals Service.
135 Cyprus, representative from the Ministry of Justice and Public Order.
136 Cyprus, lawyer.
137 Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legeanr. 135/2010 privind Noul Cod de ProceduräPenalä)*, 1 July 2010, Art. 344 (2) and 407 (1).
138 Netherlands, Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) (2015), Case No. 14/00030, 3 February 2015.
139 Italy, Judgment of the Court of Cassation, Sixth Penal Section, No. 45457 of 29 September 2015.
140 Fair Trials Europe, Legal Experts Advisory Panel (2015a), p. 36.

Figure 3: EU Member State approaches to oral translations or oral summaries of essential documents (except Denmark)



Source: *FRA, 2015*

Member States generally fall into three categories (see Figure 3) with regard to their approach to allowing oral instead of written translations of essential documents:

States that do not provide for any exceptions – i.e. written translations of essential documents must always be provided (4 Member States);

1. States that allow oral translations of essential documents as substitutes for written translations in some cases – the main criterion being whether or not a suspect/accused has legal counsel (5 Member States);

2. States that allow oral translations of essential documents in some (usually exceptional) cases for other reasons – principally only if this does not prejudice the suspect/accused's procedural rights/fairness of proceedings, and if there is no time to provide oral translation (18 Member States).

Further breaking down these categories, about three quarters (23) of Member States bound by the directive allow oral translations of essential documents in certain cases, while one quarter does not allow exceptions. However, practitioners consulted for this research indicated that, in Member States that purportedly do not allow oral translations of essential documents, this is not necessarily the case in practice. Similarly, while the majority of Member States claim to allow oral translations or summaries in exceptional circumstances only, this is not borne out in practice in all Member States – far more commonly, oral translations or summaries are not allowed only on exception. Regardless of what categories the Member States fall in, suspects/accused persons can of course waive their right to written translation of essential documents, as long as the waiver satisfies the requirements set out in Article 3(8) of Directive 2010/64/EU).

One clear trend in four Member States (Austria, Bulgaria[141], Germany and Malta[142]) is that the main criterion

141 Bulgaria, Sofia City Court judge.
142 Malta, legal practioners.

for allowing oral translations of essential documents is whether or not a person has legal counsel. For example, in Austria, legal commentators stated that, as a rule, oral translation is sufficient – except for the essential documents listed in the criminal legislation, which always have to be translated in writing. However, if a person has an attorney, an oral summary suffices – in fact, oral translation is allowed even if the accused does not have legal representation, as long as this is compatible with the right to a fair trial.[143]

In Germany, a recognisable trend of not providing written translations of judgments when the accused has a defence counsel has emerged in recent case law.[144] There are doubts as to the lawfulness of such a scheme, which has been criticised in the legal literature and by legal practitioners. [145] When it is not possible for an accused to read the judgment to comprehend the reasons for their conviction, this arguably does not meet the requirements of the right to a fair trial.[146] According to the law, "As a rule, written translations of custodial orders, bills of indictment, penal orders and non-binding judgments are necessary for accused persons who do not have a command of the German language to exercise their rights under the law of criminal procedure. A written translation of excerpts is sufficient if the accused's rights under the law of criminal procedure are safeguarded. An oral translation of the documents or an oral summary of their content may be substituted for a written translation if the rights of the accused under the law of criminal procedure are thereby safeguarded. As a rule, this can be assumed if the accused has a defence counsel."[147] Thus, according to this provision, it is possible to refrain from providing written translations in the majority of cases if the accused has legal counsel.

In the minority of Member States that purportedly do not allow oral translations of essential documents (the Czech Republic,[148] Estonia,[149] Poland,[150] and Slovakia[151]), very specific exceptions may still apply. In Poland, for example, decisions presenting, supplementing or changing charges, indictments, as well as judgments that can be subject to appeal or that end the proceedings must be translated in writing. However, oral translation is acceptable for judgments terminating proceedings if appeals against them are not admissible, and the suspect/accused person consents. In Slovakia, an oral summary of essential documents is in theory acceptable only if the suspect/accused has waived his or her right to a full-fledged translation. However, practitioners consulted during FRA's research confirmed that, in practice, oral summaries of legal documents are used much more frequently than full-fledged translations because they are faster and less costly.[152]

As noted above, practitioners also indicated that in countries in the final category, which comprises the majority of Member States, the concept of 'exceptional cases' – in which oral translations of essential documents are allowed – is in practice interpreted very broadly.

In Cyprus, the criminal procedural law lists the documents that are deemed essential and that have to be translated in writing. However, practitioners note that, in practice, written documents are not always provided *ex officio*, and often, even 'essential' documents are only translated upon request, or only orally.[153] Furthermore, oral translations of documents are usually done by the accused or suspected person's lawyer.[154] Court interpreters also provide oral translations of documents when requested by or on behalf of accused or suspected persons.[155]

In Greece, in practice, documents are as a general rule not translated.[156] Instead, documents are interpreted by an interpreter or by lawyers.[157] When translations are provided, the costs are borne by suspects or accused persons if they have the proven ability to bear them.[158] Similarly, in Sweden, in practice, it appears that written translations of documents are rarely done. The rule is that documents are translated orally.[159] In Finland, the translation of documents is not essential if the defend-

143 Bachner-Foregger, H. (2014).
144 Germany, Higher Regional Court (*Oberlandesgericht*) Stuttgart, 6 – 2 StE 2/12, 9 January 2014; Higher Regional Court (*Oberlandesgericht*) Hamburg, 2 Ws 253/13, 6 December 2013, Germany, Higher Regional Court (*Oberlandesgericht*) Hamm, III-2 Ws 40/14, 11 March 2014; Bockenmühl, J. (2014).
145 Eisenberg, U. (2013); Yalçin, Ü. (2013).
146 Bockenmühl, J. (2014).
147 Germany, Act on Strengthening Procedural Rights of Suspected Persons in Criminal Proceedings (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren*), 2 July 2013, Section 187 (2).
148 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Art. 28 (2).
149 Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Art. 10 (7).
150 Poland, The Code of Criminal Procedure (*ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego*), 6 June 1997, Section 72 (3).
151 Slovakia, Act No. 301 /2005 Code of Criminal Procedures (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 24 May 2005, Article 24.
152 Slovakia, attorneys and interpreter/translator.
153 Cyprus, lawyer.
154 Cyprus, lawyer.
155 Cyprus, Letter from the Office of the Attorney General, Reference C.E. 4.2.32.1.5.1, 4 May 2015.
156 Greece, Court of First Instance lawyer; Supreme Court lawyer.
157 *Ibid.*
158 Greece, National Commission for Human Rights, Report on the right to interpretation and translation and the right to information in criminal proceedings, 23 November 2015.
159 All documents may be translated orally, if the character of the document or the case or any other circumstance do not make an oral translation unsuitable *(olämplig)*. See Sweden, Code of Judicial Procedure *(Rättegångsbalk (1942:740))*, 1 January 2014, Chapter 33, para. 9. It is not specified what "any other circumstance" may be.

ant can get the information via his/her counsel and if the content of the document is not complicated or difficult to understand. According to the Finnish Bar Association,[160] in general – regardless of the language of the suspect/accused – very little material is provided in the final statement of the criminal investigation. In practice, the counsel asks the police for the translation of the essential documents. However, in many cases, lawyers for the suspects/accused take care of acquiring translations of documents important for the defence and bear the costs of doing so to secure sufficient time to prepare the defence. In Portugal, it was reported that, in practice, decisions as to whether or not there is a need for a written translation of an essential document often depend on how complex the content of the document is and on specific circumstances of the case. The decision-maker must also consider whether a mere oral translation would jeopardise the defendant's right of defence.[161]

Further guidance on when oral as opposed to written translation suffices can be found in national case law. For example, the Court of Cassation in France reviewed a case concerning an investigating judge's failure to proceed on their own initiative with a written translation of essential documents in a procedure against a person accused of stealing valuable historic maps. The court ruled that this failure did not have any bearing on the validity of acts lawfully carried out by criminal authorities – such as the arrest or placement in detention – unless this compromised the right of defence and the right of the accused to pursue an appeal.[162]

2.3. Providing interpretation and translation services for communications with legal counsel

Article 2(2) of Directive 2010/64/EU also requires interpretation to be available for communications between suspects or accused persons and their legal counsel "in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications", where this is necessary for the purpose of safeguarding the fairness of the proceedings.[163] As outlined in Recitals (19) and (20), this is among other reasons required to allow suspects and accused persons to explain their version of events to their legal counsel, point out any statements with which they disagree, and make their legal counsel aware of any facts that should be put forward in their defence. It is therefore clear that interpretation should be provided not only during questioning or other investigative or judicial actions themselves, but more generally in relation to these actions, where this is needed to ensure that persons can adequately carry out their right to defence.

The adoption of Directive 2010/64/EU prompted many Member States to explicitly regulate this issue. Examples include Greece,[164] Poland,[165] and Slovenia.[166] In Austria, the right to interpretation for communications with a lawyer – which was previously granted only in relation to publicly appointed legal counsel – was extended to any legal counsel.[167] In Germany, the right of the accused to communicate with their legal counsel was already previously stipulated by national jurisprudence, which deemed it necessary to safeguard the rights of the accused in criminal proceedings and the right to a fair trial enshrined in Article 6 of the ECHR.[168] In Luxembourg, draft legislation implementing Directive 2010/64/EU proposed an exception to the general rule of criminal procedure, pursuant to which court costs are borne by the convicted person in case of a conviction.[169]

Although the majority of Member States currently explicitly regulate this issue in their national legislation, there are certain exceptions. In Sweden, a government inquiry on implementing Directive 2010/64/EU established that such interpretation is provided on the basis of analogical applications of existing provisions of the Code of Criminal Procedure – such as the legal counsel's duty to prepare the defence through consultation with the suspect or accused person, which cannot be fulfilled without an interpreter if the person does not speak Swedish.[170] In Hungary, this issue is also not regulated by law; in practice, however, an interpreter assigned for the proceedings is also available for communications between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during criminal proceedings. Pursuant to a decision of the country's Supreme Court, the costs of such interpretation are borne by the state.[171]

160 Finland, lawyer, Finnish Bar Association.
161 Portugal, judge, Court of Appeal.
162 France, Court of Cassation Criminal Chamber, No. 14-86226, 7 January 2015.
163 Directive 2010/64/EU, Art. 2 (2).
164 Greece, Code of Criminal Procedure, Art. 233 (1), as amended by Art. 2 (1) of Law No. 4236/2014.
165 Poland, Code of Criminal Procedure (*ustawa z dnia 6 czerwca 1997 r.– Kodeks postępowania karnego*), 6 June 1997, Art. 72 (2).
166 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), Art. 74 (2)-(3), 1 January 2006; criminal law judge.
167 Bachner-Foregger, H., (2014), Rz 5 and Rz 23.
168 Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 2 BvR 2032/01, 27 August 2003, and Federal Court of Justice (*Bundesgerichtshof*), 3 StR 6/00, 26 October 2000.
169 Luxembourg, Chamber of Deputies, Bill 6758 strengthening the procedural guarantees in criminal matters.
170 Sweden, Ministry of Justice *(Justitiedepartementet)* (2012), p.63.
171 Hungary, Guiding Decision No. 1/2013 of the Criminal Department of the Kúria (*1/2013. számú büntető elvi döntés*).

2.3.1. Scope of the right to interpretation for communications with legal counsel

As outlined above, Directive 2010/64/EU principally links the obligation to provide interpretation for communications with counsel with a direct connection between the communication and procedural actions. Some Member States have adopted similar wording, requiring a 'direct connection' with the proceedings. Examples include Estonia,[172] Slovakia,[173] and Spain.[174]

In France, the legislation specifies that such communication includes "interviews which take place in the premises of the investigation services, the courts and the penal establishments"; namely interviews related to detention during police custody, hearings by magistrates or appearances in court, appeals and applications for release.[175] During other instances, the authority directing the proceedings can grant interpretation upon application.[176]

Some Member States apply a more flexible approach. In the Netherlands, the general right to call upon the assistance of an interpreter – granted by the Code of Criminal Procedure – extends to communications with legal counsel and can be relied upon throughout the entire proceedings.[177] In Greece, interpretation can be provided during any stage of the criminal proceedings, including for communications with legal counsel "where necessary".[178] However, the application of such general rules can pose problems in practice (as further addressed below).

In the United Kingdom (England and Wales), the legislation stipulates that "interpretation services should be provided to enable a suspect to understand their position and be able to communicate effectively with police officers, interviewers [and] solicitors".[179] The Legal Aid Agency pays for an interpreter required by a legal counsel for taking instructions from a client outside the courtroom, provided the cost is reasonable.[180] Similar conditions apply in Northern Ireland. In Scotland, the legislative rules are closer aligned with the wording of Directive 2010/64/EU,[181] i.e. provide that interpretation is available in direct connection with the proceedings. In practice, according to criminal practitioners consulted during the research conducted for this report, interpretation is available for any communication with legal counsel and the state covers costs "actually and reasonably incurred".[182]

Some Member States impose additional limitations that could jeopardise the right as provided for in the directive. In several Member States, the provision of interpretation for communications with legal counsel is limited to a certain length of time. In Latvia, interpretation covered by the state is restricted to two hours per "procedural activity".[183] In the framework of research on "The registries of interpreters/translators and organisation of the work in the European Union" commissioned by the States Language Centre, this was highlighted as problematic as regards the admissibility of evidence and the right to defence as provided by the ECHR.[184] Similarly, in Germany, criminal practitioners noted that in some courts, access to interpretation for purposes of communicating with one's legal counsel is limited to several hours.[185]

In several Member States, the availability of interpretation for communicating with legal counsel is made largely dependent on the provision of legal aid. Such qualification unnecessarily restricts the directive's approach, which conditions the provision of interpretation only by referring to situations where "it is necessary for the purpose of safeguarding the fairness of

172 Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Art. 10 (2).
173 Slovakia, Code of Criminal Procedures, 301/2005 Coll. (*Zákon č. 301/2005 Z. z. Trestný poriadok*), Art. 28, para.1, 2005.
174 Spain, Code of Criminal Procedures (*Código Procedimiento Penal*), reform by Organic Law 5/2015, amending Article 520.2.d), Art. 123.1 b), 27 April 2015.
175 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. D.594-3.
176 France, Circular relative to the presentation of the provisions of law No.2013-711 of 5 August 2013 and decree No. 2013-958 of 25 October 2013 relating to the implementation of the right to interpretation and translation within the framework of criminal proceedings (*Circulaire relative à la présentation des dispositions de la loi n° 2013-711 du 5 août 2013 et du décret n° 2013-958 du 25 octobre 2013 relatives à la mise en œuvre du droit à l'interprétation et à la traduction dans le cadre des procédures pénales*), NOR:JUSD1327250C, 31 October 2013, II c.
177 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering*), Art. 27, para. 4, and Art. 28, para. 3.
178 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 233 (1).
179 UK, HM Government (2014), Police and Criminal Evidence Act 1984 (PACE) Code C Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers, 2 June 2014, para. 13.1A.
180 UK, HM Government (2013), p. 15, para. 6.29.
181 UK, HM Government (2014), Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014 (19 May 2014), Explanatory Note, para. (b).
182 UK, HM Government Criminal Legal Aid (Scotland) (Fees) Regulations 1989, regulation 8 (b) and (c).
183 Latvia, Regulation No.1342 'Procedures for providing translation services to a person who has the right of defence, during a meeting with legal counsel' (*Noteikumi Nr.1342 "Kārtība, kādā personai, kurai ir tiesības uz aizstāvību, tikšanās laikā ar aizstāvi tiek nodrošināta tulka palīdzība"*), 19 November 2013.
184 Latvia, "The registries of interpreters / translators and organisation of the work in the European Union" (*Tiesu tulku/tulkotāju reģistri un darba organizācija Eiropas Savienībā*), 22 October 2014, p. 25.
185 Germany, representative from the Criminal Law Committee of the German Bar Association (DAV).

the proceedings" and to communication that is "in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications". Furthermore, from a fundamental rights point of view – in particular the defence rights enshrined in Article 6 of the ECHR and Article 48(2) of the EU Charter – where a defendant is entitled to legal aid, such legal aid should in any case cover costs of legal interpretation, including costs linked with the need to use interpretation services.

Rules that make the availability of interpretation for communications with legal counsel dependant on the provision of legal aid exist, for example, in Lithuania – where interpretation is usually provided by interpreters who are employees of the court, and is therefore available during hearings and pre-trial interviews but not during other meetings with a defence counsel, unless the person was granted legal aid. In response to an individual complaint against the non-provision of interpretation in relation to a privately contracted legal counsel, the Parliamentary Ombudsman concluded that, although the Code of Criminal Procedure provisions regarding interpretation and translation for suspects' communication with defence counsel outside of the trial might formally comply with Directive 2010/64/EU, they should be further clarified. The Ministry of Justice, however, responded that it considered the existing rules adequate.[186]

In Belgium, access to interpretation for purposes of communicating with legal counsel seems similarly limited. It is only provided to persons in detention or for questioning that could result in a suspect's detention – otherwise it can only be relied upon by persons granted legal aid, and even then only for a limited period of time (up to three hours).[187] This raises the question whether such limitations unduly restrict the right to a fair trial.

A lack of awareness of applicable rules, particularly in the case of recently introduced legal provisions, poses another – more practical than formal – obstacle to full application of the right to interpretation for communications with legal counsel. Legal practitioners and authorities in Cyprus consulted for this report claim that lawyers may not be requesting interpretation for communications with their clients because they are unaware of this right, and the police is therefore not likely to provide it.[188] Similarly, in Greece, in practice it is the lawyers who organise interpretation for their communications with their clients. However, they often fail to file a request with the court to formally appoint such interpreters in accordance with the relevant legislation. This may be because the relevant legislation is rather new. Failing to submit a formal request to the court means that the state is not obliged to cover the costs.[189]

Finally, in Ireland, although persons in custody have the right to be appointed an interpreter at no cost if necessary to communicate effectively with their defense counsel,[190] some legal professionals reported cases of the police claiming that this is the responsibility of the legal counsel, who then also has to bear the cost.

2.3.2. Scope of the right to translation of communications with legal counsel

The directive does not expressly cover the translation of written documents in communications between suspects or accused persons and their legal counsel. The legislation of the majority of Member States therefore does not regulate this issue. As a result, where the need for a translation of such a document arises, it is usually provided orally by the interpreter. Legal practitioners confirm that this is the case in Greece[191] and Hungary,[192] for example.

Where it is up to the authorities, such as courts, to decide on a case-by-case basis whether certain documents can be considered essential and therefore be subject to translation, the defence can apply for the translation of a particular document under this mechanism. This is the case, for example, in Portugal[193] and Spain.[194] In Sweden, it is up to the defence to contract a translator and then make a reasoned request for remuneration to the competent court.[195] Legal practitioners from Germany[196] confirmed that while such situations are relatively rare, courts have in the past approved the translation of, for example, detailed written instructions given by the accused for their legal counsel.

186 Lithuania, The Seimas Ombudsperson's Office (*Seimo kontrolierių įstaiga*), A report regarding the complaint against the Ministry of Justice No. 4D-2014/1-1593, 25 February 2015.
187 Belgium, Senate, Request of explanation (No 3-493) to the Minister of Justice on the right to free assistance of an interpreter (*Demande d'explications de Mme Clotilde Nyssens à la Vice-première Ministre et Ministre de la Justice sur «le droit à l'assistance gratuite d'un interprète» (n° 3-493)*), 22 December 2004.
188 Cyprus, lawyers.
189 Greece, Court of First Instance lawyer; Supreme Court lawyer.
190 Ireland, Statutory Instrument No.564 of 2013 European Communities Act 1972 *(Interpretation and Translation for Persons in Custody in Garda Síochána Stations) Regulations, 2013*, Regulation 4 (2).
191 Greece, Court of First Instance lawyer; Supreme Court lawyer.
192 Hungary, criminal lawyer.
193 Portugal, representative from the General Prosecution Office.
194 Spain, court clerk of Madrid's Instruction Court No. 2.
195 Sweden, Ministry of Justice (*Justitiedepartementet)* (2012), pp. 79 – 80.
196 Germany, Higher Regional Court (OLG) Frankfurt, 2 Ws 117/05, 13 October 2005.

Alternatively, the translation of written communications with legal counsel is sometimes covered by legal aid granted to the accused (for example, in the Czech Republic and France).[197]

2.3.3. Using officially appointed interpreters for communications with legal counsel

Directive 2010/64/EU does not specify whether interpretation for communications between suspects or accused persons and their legal counsel should be provided by interpreters appointed by the authority directing the proceedings or whether the state should reimburse the defence for a privately contracted interpreter. This leads to a variety of different models in individual Member States. Having a system where national authorities have exclusive power to choose an interpreter may be seen as interfering with the private relationship of the defendant and his/her lawyer. It particularly raises questions regarding the suitability of using an interpreter employed or appointed by the authorities for interpreting confidential communications with the legal counsel.

Using the same state-appointed interpreters to interpret both during police interrogations and to interpret communications between a defendant and their lawyer may present a conflict of interest, and may conflict with the principle of confidentiality of client-counsel communications. While relying on interpreters regularly used by police or other criminal justice authorities can be beneficial in terms of their availability, speed, and knowledge of the procedures, they can be unsuitable for interpretation in a client-counsel relationship – unless strict quality safeguard are put in place (see also Section 2.4).

The practice of extending the services of an officially appointed interpreter to also fulfil this role exists in a number of Member States, including Croatia,[198] Ireland,[199] and Sweden.[200] Some of them do, in their legislation or practice, take into account the possibility that the defence might not consider the officially appointed interpreter suitable to interpret confidential communications. In Portugal,[201] the suspect or accused is actually entitled to request a different interpreter for this purpose, free of charge. According to legal practitioners, however, this is seldom requested, in part because conversations with legal counsel are often interpreted by the suspect's or accused's family members – which raises different questions regarding the interpreter's quality and independence.

In cases involving detained individuals in Slovenia, court interpreters used by the police may also assist with communications between the suspect and the legal counsel, but the applicable legislation stipulates that they are bound by confidentiality rules.[202]

In the United Kingdom (England and Wales), interpreters called by the police to interpret during proceedings are generally also available for communications between the suspect and legal counsel, but the defence has the opportunity to request a different interpreter. Nevertheless, the Law Society of England and Wales advises that, if a police interpreter is used, the legal counsel should seek the suspect's consent and advise the client that the interpreter is independent from the police as they are bound by their professional code of conduct, which requires them to maintain confidentiality. If the legal counsel believes that using an alternative interpreter is more appropriate, they must arrange and pay for the interpreter's services.[203]

2.4. Quality safeguards

Directive 2010/64/EU requires Member States to take concrete measures to ensure that the interpretation and translation provided is of a quality "sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence." To this end, "Member States shall endeavour" to establish a register or registers of independent translators and interpreters who are appropriately qualified, which should, when appropriate, be made available to legal counsel and relevant authorities.[204] Thus Member States are not required to establish such registers, but if they choose not to establish one, they should set out other concrete means of ensuring the quality of services. Member States should also ensure that interpreters and translators are required to observe confidentiality regarding interpretation and translation provided under this directive.[205]

197 France, Law No. 91-647 (*Loi n° 91-647 relative à l'aide juridique*), 10 July 1991, Art. 40ff.
198 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*), 17 December 2014, Art. 8, para. 8.
199 Ireland, An Garda Síochána, Code of Practice on Access to a Solicitor by Persons in Garda Custody, April 2015, p. 11.
200 Sweden, legal counsel at Swedish law firm.
201 Portugal, Criminal Procedural Code (*Código de Processo Penal*), 17 February 1987, Art. 92 (3).
202 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Appendix 1.
203 UK, The Law Society of England and Wales (2015), para. 3.1.2.
204 Directive 2010/64/EU, Art. 5 (2); see also Vigier, F. *et al* (2013).
205 Directive 2010/64/EU, Art. 5 (3).

The following sections present FRA's research results with regard to the existence and use of registers of interpreters and translators in the EU and other means used to ensure the quality of services, including when interpretation and translation into lesser known languages is involved and no registered interpreter or translator is available. Working conditions of interpreters and translations are also looked into.

2.4.1. Official registers

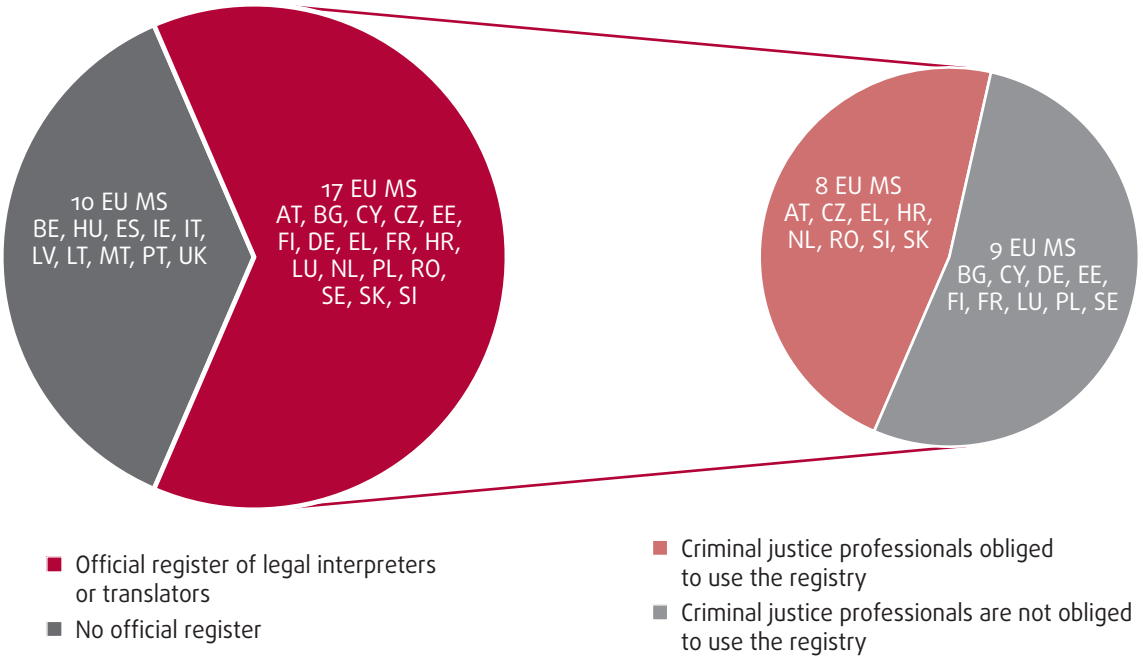
Figure 4 shows which Member States have a register, or registers, in which they list translators and interpreters whose services can be used in the course of criminal proceedings. It also specifies whether the use of these registers is mandatory for criminal justice professionals, including the police and the courts. This section discusses the minimum requirements for inclusion in these registers. In addition, it analyses the alternatives used by criminal justice professionals when registered legal interpreters or translators (LITs) cannot be located/are unavailable – for example, because a rare language is involved.

Although Directive 2010/64/EU does not require Member States to establish a register, Figure 4 shows that 17 Member States bound by the directive have provided for one in their laws: Austria,[206] Bulgaria,[207] Cyprus, Croatia,[208] the Czech Republic,[209] Estonia, Finland,[210] France,[211] Germany,[212] Greece,[213] Luxembourg,[214] the Netherlands,[215] Poland,[216] Romania,[217] Slovakia,[218] Slovenia,[219] and Sweden.[220] (Denmark, although not bound by the directive, has one as well). Cyprus has a register for interpreters only[221] and Estonia has one for translators only.[222] This number (17) does not include Member States that have contracted out interpretation and translations, or Member States that rely on unofficial lists. In some cases, it was difficult to identify whether a register fits within the wording of the directive. For example, Malta has a court's register and a police list, but neither of these are compulsory, and do not have clear qualification requirements for entry therein.[223]

With the directive using quite general language, registers have taken different forms in Member States. For example, 11 Member States have one central register. In six Member States, this is maintained by the Ministry of Justice (the Czech Republic,[224] Luxembourg,[225] Poland,[226] Romania,[227] Slovakia,[228] and Slovenia[229]). In three Member States (Estonia,[230] the Netherlands,[231]

206 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO*), 1975, § 126 (2a).
207 In Bulgaria, various registers are maintained by the Specialised Criminal Court, the Supreme Court of Cassation, the Supreme Administrative Court, the Supreme Prosecutor's Office of Cassation, the Supreme Administrative Prosecutor's Office and the National Investigative Service.
208 Croatia, The Rules on Permanent Court Interpreters (*Pravilnik o stalnim sudskim tumačima*), 12 June 2008.
209 Czech Republic, Act on Experts and Interpreters (*Vyhláška k provedení zákona o znalcích a tlumočnících*), 17 April 1967, Section 7.
210 Finland, Government Bill (HE 39/2015 vp). See also Finland, Ministry of Justice (2014), *Uusi tutkinto pätevöittää oikeustulkin*, Press release, 2 June 2014.
211 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. D.594-11.
212 Germany, Database of translators and interpreters (*Dolmetscher- und Übersetzerdatenbank*).
213 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 233 (2).
214 Luxembourg, Act of 7 July 1971 designating, for administrative and law enforcement matters, sworn experts, translators and interpreters and completing the legal provisions on sworn experts, translators and interpreters (*Loi du 7 juillet 1971 portant, en matière répressive et administrative, institution d´experts, de traducteurs et d´interprètes assermentés et complétant les dispositions légales relatives à l´assermentation des experts, traducteurs et interprètes*), 19 July 1971.
215 Netherlands, Sworn Interpreters and Translators Act (*Wet beëdigde tolken en vertalers*).
216 Poland, Act on the Profession of Sworn Translator (*Ustawa z dnia 25 listopada 2004 r. o zawodzie tłumacza przysięgłego*), 25 November 2004.
217 Romania, Law no. 178/1997 on the authorisation and payment of interpreters and translators used by criminal investigation bodies, courts, public notary offices, lawyers and the Ministry of Justice *(Legenr. 178/1997 pentruautorizareaşiplatainterpreţilorşitraducătorilorfolosiţi de organele de urmărirepenală, de instanţelejudecătoreşti, de birourilenotarilorpublici, de avocaţişi de MinisterulJustiţiei)*, 1997, Art. 5.
218 Slovakia, Ministry of Justice (*Ministerstvo spravodlivosti SR*).
219 Slovenia, Courts Act (*Zakon o sodiščih*), 13 April 1994, Art. 88 (2).
220 Sweden, Legal, Financial and Administrative Services Agency (*Kammarkollegiet*).
221 Cyprus, lawyer.
222 Estonia, Sworn Translators Act (*Vandetõlgi seadus*), 23 December 2013; Chamber of Sworn Translators.
223 Malta, representative of the Court Registry.
224 Czech Republic, Act on Experts and Interpreters (*Vyhláška k provedení zákona o znalcích a tlumočnících*), 17 April 1967, Section 7.
225 Luxembourg, Act of 7 July 1971 designating, for administrative and law enforcement matters, sworn experts, translators and interpreters and completing the legal provisions on sworn experts, translators and interpreters.
226 Poland, Ministry of Justice (*Ministerstwo Sprawiedliwości*).
227 Romania, Law no. 178/1997 on the authorisation and payment of interpreters and translators used by criminal investigation bodies, courts, public notary offices, lawyers and the Ministry of Justice, Art. 5.
228 Slovakia, Ministry of Justice (*Ministerstvo spravodlivosti SR*), The single automated system of legal information.
229 Slovenia, Courts Act (*Zakon o sodiščih*), 13 April 1994, Art. 88 (2).
230 For example, Chamber of Sworn Translators. See Sworn Translators Act (Vandetõlgi seadus) 23 December 2013.
231 Netherlands, Including the Administrative Law Division of the Council of State, the Courts, the Public Prosecution, Police. Netherlands, Sworn Interpreters and Translators Act (*Wet beëdigde tolken en vertalers*), Art. 28, para. 1.

Figure 4: Official registers of legal interpreters or translators in EU Member States



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive.*

Source: *FRA, 2015*

and Sweden[232]), it is maintained by various other public agencies or bureaus. Other systems have multiple registers that are maintained by the courts (Bulgaria,[233] Greece,[234] and France[235]). Austria has a hybrid system: there is a national court-appointed specialist and interpreters' database maintained by the Ministry of Justice,[236] as well as a specific list for criminal law in Vienna, maintained by the Federal Ministry for the Interior.[237]

FRA's research indicates that, to ensure that the registers work effectively in practice, it is essential for the responsible authorities to keep the information included therein practical, relevant and up-to-date.

Field perspectives: the LIT questionnaire

"The current register urgently needs to be updated and improved. It contains a lot of outdated information, no contact information except for a postal address (which is often outdated), which makes it useless for the police forces who often require the presence of an interpreter within a few hours."

Christine Schmit, Vice-president, Luxembourg Translators and Interpreters Association (ALTI)

Source: FRA, 2015

232 Sweden, Legal, Financial and Administrative Services Agency (*Kammarkollegiet*).

233 Bulgaria, Judiciary Act (*Закон за съдебната власт*), 7 August 2007, Art. 398, para. (1) and (2); Bulgaria, Regulation No H-1 of 16 May 2014 on judicial interpreters and translators (*Наредба № Н-1 от 16.05.2014 г. за съдебните преводачи*), 23 May 2014, Art. 3 and 4; Bulgaria, National Legal Aid Bureau (*Национално бюро за правна помощ*) (2015), Letter of 30.04.2015 to the Center for the Study of Democracy (*Писмо от 30.04.2015 г. до Центъра за изследване на демокрацията*), 30 April 2015.

234 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 233 (2).

235 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. D.594-11.

236 Austria, specialists' and interpreters' database appointed by court (*Gerichtssachverständigen- und Gerichtsdolmetscherliste*) and the register for criminal law (*Justizbetreuungsagentur*).

237 Austria, Justice Services Agency (*Justizbetreuungsagentur, JBA*), *Amtsdolmetscher*.

In eight of the Member States (Austria,[238] the Czech Republic,[239] Greece,[240] Croatia,[241] the Netherlands, Romania,[242] Slovakia,[243] and Slovenia[244]) that have a register, the legislation explicitly obliges criminal justice professionals to use it when choosing a legal interpreter or translator for each individual case. In the Netherlands, for example, the criminal justice professionals who are obliged to use a sworn interpreter or translator includes lawyers who offer their services as part of the Legal Aid Act,[245] as well as the police, the courts, and the public prosecution service.

Laws in Bulgaria,[246] Germany,[247] Denmark,[248] Estonia,[249] Finland, France,[250] Luxembourg,[251] Poland,[252] and Sweden[253] allow the police and courts to use unregistered interpreters and translators. In Cyprus, the police authority confirmed that there is one register for the courts, which is not mandatory, and one for the police, which police officers are required to use.[254] In Estonia, it was reported by police that 80% of translations are performed by in-house translators, rather than sworn translators from the register.[255] Denmark is not bound by the directive, and it is not mandatory for institutions to use the list; nonetheless, a case from the Parliamentary Ombudsman, in which an interpreter argued that removing him from the list deprived him of means of subsidence, indicates that the list is a well-used tool.[256]

Even where criminal justice professionals are obliged to use the registers, this cannot always be guaranteed in practice. For example, in Greece, using unregistered interpreters and translators is only to be authorised in exceptional circumstances, but this reportedly tends to be the rule.[257] Similarly, in the Netherlands, although the police, courts, prosecutors[258] and solicitors[259] are obliged to use the official register, this is reportedly not always applied in practice. An official from the Ministry of Security and Justice confirmed that unsworn interpreters are still often used in police stations because they tend to be available more quickly. The official stated that this was an old habit among police officers that still continues.

Promising practice

Developing a European database of legal interpreters and translators to be set up on the European e-Justice portal

LIT Search is a pilot project for a European database of legal interpreters and translators, coordinated by KU Leuven (Antwerp, Belgium) and funded by the Criminal Justice Programme of the European Commission Directorate General Justice. The project studied the current situation regarding national and/or regional registers of legal interpreters and translators and resulted in the development of a pilot database. The pilot database was presented at the final conference in Antwerp, Belgium on 9 and 10 November 2015. The database is now available online.

Source: EULITA, website.

238 Austria, Code of Criminal Procedure (Strafprozessordnung, StPO), 1975, para. 126 (2a).
239 Czech Republic, Ministry of Justice (*Ministerstvo spravedlnosti ČR*), Decree to Implement the Act on Experts and Interpreters (*Vyhláška k provedení zákona o znalcích a tlumočnících*), 17 April 1967.
240 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 233 (2).
241 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*) (2014), Official Gazette (*Narodne novine*) Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13,145/13, and 152/14, 17 December 2014, Art. 309 para. 4.
242 Romania, Law no. 178/1997 on the authorisation and payment of interpreters and translators used by criminal investigation bodies, courts, public notary offices, lawyers and the Ministry of Justice, Art. 2.
243 Slovakia, Act No. 382/2004 on Appraisers, Interpreters and Translators (*Zákon č. 382/2004 Z. z. o znalcoch, tlmočníkoch a prekladateľoch*), 26 May 2004, Art. 15, para. 1.
244 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku*), 13 October 1994, Art. 8 (4).
245 Netherlands, *Regeling van de Staatssecretaris van Veiligheid en Justitie d.d. 4 februari 2015 nr. 596065 houdende de aanwijzing van enkele organisaties als afnameplichtige organisatie in de zin van artikel 28, eerste lid, Wet beëdigde tolken en vertalers (Regeling uitbreiding afnameplicht Wbtv*), *Staatscourant,* Vol. 2015, No. 4089, 17 Februar 2015.
246 Bulgaria, Judiciary Act (*Закон за съдебната власт*), 7 August 2007, Art. 396, para. 1 and 2.
247 Germany, representative from with the Criminal Law Committee of the German Bar Association; the Regional Court (*Landgericht*) Berlin; the Regional Court (*Landgericht*) Hamburg; and the Regional Court (*Landgericht*) Köln.
248 Denmark, the Parliamentary Ombudsman, statement in case on deletion of interpreter from interpreter register (*Sagsoplysning ved sletning af tolk fra tolkefortegnelse*), FOB.nr.99.226, 18 September 2001.
249 Estonia, representative from the Police and Border Guard Board (*Politsei- ja Piirivalveamet*); representative from the Prosecutor's office (*Prokuratuur*).
250 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. D.594-11.
251 Luxembourg, Act of 7 July 1971 designating, for administrative and law enforcement matters, sworn experts, translators and interpreters and completing the legal provisions on sworn experts, translators and interpreters, Art. 3.
252 Poland, judgment of the Appellate Court in Katowice, 13 September 2011, II AKa 210/11 and judgment of the Appellate Court in Kraków, 2 July 2008, II AKa 89/08.
253 Sweden, representative from the Swedish Police's section for EU coordination.
254 Cyprus, police representative.
255 Estonia, representative from the Police and Border Guard Board; Estonia, representative from the Prosecutor's office.
256 Denmark, the Parliamentary Ombudsman (*Ombudsmanden*), Statement in case on deletion of interpreter from interpreter register (*Sagsoplysning ved sletning af tolk fra tolkefortegnelse*) FOB.nr.1999.226, 18 September 2001.
257 Vlachopoulos, S. (2014), p. 90.
258 Netherlands, Sworn Interpreters and Translators Act (*Wet beëdigde tolken en vertalers*), Art. 28, para. 1.
259 Netherlands, *Regeling van de Staatssecretaris van Veiligheid en Justitie d.d. 4 februari 2015 nr. 596065 houdende de aanwijzing van enkele organisaties als afnameplichtige organisatie in de zin van artikel 28, eerste lid, Wet beëdigde tolken en vertalers (Regeling uitbreiding afnameplicht Wbtv*), *Staatscourant,* Vol. 2015, No. 4089, 17 Februar 2015.

Minimal requirements for inclusion in registers as a LIT

Directive 2010/64/EU provides only general guidance on the minimum requirements for acting as an interpreter or translator, referring to "quality sufficient to safeguard the fairness of the proceedings". FRA's research indicates that Member States require varying minimal qualifications for individuals to be included in registers.

As shown in Table 4, in some Member States, interpreters and translators are required to pass specialised exams, while in others, it can be sufficient to present other evidence of qualification, such as professional experience or education. In others still this may be combined with other requirements, such as undertaking specialised training or having a minimum level of language capability. The situation not only differs between EU Member States, but also within the states themselves. In Germany, due to its federal status, the situation is particularly complex, with minimum requirements varying among the *Länder* (States).[260]

Eight Member States (Austria,[261] Croatia,[262] Finland, Poland,[263] Romania, Slovakia, Slovenia,[264] and Sweden[265]) require interpreters and translators to pass a specialised

Table 4: Required qualifications for legal interpreters or translators to be included in national registers in EU Member States

	Professional experience	Exam	Vocational training	Higher education	Language requirement
Austria	■	■			
Bulgaria					■
Croatia		■	■	■	■
Czech Republic	■		■	■	
Estonia				■	
Finland		▨		■	
France	■				■
Greece				■	
Netherlands	▨		▨	■	▨
Poland		■		■	
Romania		▨		■	
Slovakia	■	■	■		
Slovenia	■	■		■	
Sweden		■			

Note: *The white-and-black patterns refer to alternative qualification options. In Finland and Romania, candidates can either complete a minimum level of higher education or successfully pass a test. In the Netherlands, individuals can either meet the higher education requirement, or a combination of the language, vocational training, and professional experience requirements. In Germany, required qualifications vary across the state. Cyprus and Luxembourg have registers, but no official requirements for joining them.*

Source: *FRA, 2015*

260 Germany, representatives from the regional courts (*Landgericht*) of Berlin, Hamburg and Köln.
261 Austria, Austrian Association of court-certified interpreters (*Österreichischer Verband der Allgemein Beeideten und Gerichtlich Zertifizierten Dolmetscher*), *Instructions for applicants* (*Merkblatt für Eintragungswerber*).
262 Croatia, The Rules on Permanent Court Interpreters (*Pravilnik o stalnim sudskim tumačima*) (2007), Official Gazette (*Narodne novine*) Nos. 150/05 and 16/07, 12 June 2008, Art. 2.
263 Poland, The Act on the Profession of Sworn Translator (*Ustawa z dnia 25 listopada 2004 r. o zawodzie tłumacza przysięgłego*), 25 November 2004, Art. 2.1.
264 Slovenia, Courts Act (*Zakon o sodiščih*), 13 April 1994, Art. 93 (1).
265 Sweden, Legal, Financial and Administrative Services (*Kammarkollegiet*), Register of Interpreters (*Tolkregistret*).

exam before registration. For example, in Slovakia, exams for legal interpreters and translators are centralised and run by the national training institute for judges, prosecutors and court officials.[266] All candidates must translate/interpret the same mock trial scenarios. These proceedings are recorded to contribute to the transparency of the tender procedure.[267] In both Finland[268] and Romania,[269] candidates can either complete a minimum level of higher education or successfully pass a test to be included in the register.

Promising practice

Improving examinations of interpreters and translators

In Sweden, a rigorous examination process is in place, which includes a written examination, oral questions and a role-playing exercise. The exam tests the candidates' ability to accomplish a technically satisfying interpretation with good information transfer, meaning that the information passed between two parties is not lost in translation. Candidates are also expected to show that they are well-acquainted with the professional code of ethics and have a broad knowledge of terminology regarding social matters, health care and everyday laws.

*Source: Legal, Financial and Administrative Services Agency (*Kammarkollegiet*), Ordinance on the Authorisation of Interpreters and Translators (*Förordning (1985: 613) om auktorisation för tolkar och översättare*), 1 July 1985.*

Another minimum qualification is that of a minimum level of language capability. What this minimal level constitutes is often not clear in the laws of Member States. However, there are exceptions – such as Bulgaria, where legal interpreters and translators are required to have, at minimum, a C1 or C2 level according to the Common European Framework of Reference for Languages.[270] In France, on the other hand, there is no clear systematic language requirement. Experts have noted that an interpreter's or translator's main occupation is not required to have a connection with the linguistic field – but, in practice, legal interpreters and translators tend to have qualifications in law and/or languages.[271]

Another requirement includes a minimum level of education. In nine Member States, interpreters and translators are required to attain a certificate of higher education, either in their home country or another country (Croatia,[272] the Czech Republic,[273] Estonia,[274] Finland,[275] Greece,[276] the Netherlands,[277] Poland,[278] Romania,[279] and Slovenia[280]). In the Netherlands, individuals who do not meet the higher educational requirement can still be registered if they meet a combination of the following requirements: language requirement, vocational training and professional experience.[281]

Some Member States also have some form of vocational training focussed specifically on legal interpreting and translating – which must be completed before an individual can join a register (for instance, Croatia,[282] the Czech Republic,[283] and Slovakia). For example, in Slovakia, candidates are expected to complete at least 30 case studies provided by the Ministry of Justice through the interpreting institutes. These courses cover information on legal rules regulating the provision of

266 Slovakia, Amendment No. 322/2014 Coll. to the Act no. 548/2003 Coll. on the Judicial Academy (*Novela č.322/2014 zákona č. 548/2003 Z.z o justičnej akadémii)*, 1 December 2014.
267 Slovakia, representative of the Department of Expertise, Translation and Interpretation of the Ministry of Justice.
268 Finland, Act on the authorised translators (*Laki auktorisoiduista kääntäjistä / Lag om auktoriserade translatorer, 1231/2007*), Ch. 2, Section 2, 2007.
269 Romania, Regulations on organising the examination for obtaining the certificate for translators of a foreign language (*Regulamentul privind organizarea și desfășurarea examenului de obținere a certificatelor de traducătorînși din limbi străine*), Art. 12.
270 Bulgaria, Regulation No H-1 of 16 May 2014 on judicial interpreters and translators (*Наредба № Н-1 от 16.05.2014 г. за съдебните преводачи*), 23 May 2014, Art. 8, Items 1 and 3.
271 Larchet, K., Pelissie, J. (2009).
272 Croatia, The Rules on Permanent Court Interpreters (*Pravilnik o stalnim sudskim tumačima*) (2007), Official Gazette (*Narodne novine*) Nos. 150/05 and 16/07, 12 June 2008, Art. 2.
273 Czech Republic, The Chamber of Court Appointed Interpreters and Translators of the Czech Republic (*Komora soudních tlumočníků České republiky*), *How to become a court interpreter* (*Jak se stát soudním tlumočníkem*).
274 Estonia, Sworn Translators Act (*Vandetõlgi seadus*), 23 December 2013, Art. 16 (2).
275 Finland, Act on the authorised translators (*Laki auktorisoiduista kääntäjistä / Lag om auktoriserade translatorer, 1231/2007*), 2007, Chapter 2, Section 2.
276 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), Art. 233 (2), as amended by Art. 2 (1) of Law No. 4236/2014.
277 Netherlands, Decree on Sworn Interpreters and Translators (*Besluit beëdigde tolken en vertalers*), Art. 8 (a).
278 Poland, The Act on the Profession of Sworn Translator (*Ustawa z dnia 25 listopada 2004 r. o zawodzie tłumacza przysięgłego*), 25 November 2004, Art. 2.1.
279 Romania, Law no. 178/1997 on the authorisation and payment of interpreters and translators used by criminal investigation bodies, courts, public notary offices, lawyers and the Ministry of Justice, Art. 3 (c).
280 Slovenia, Courts Act (*Zakon o sodiščih*), 13 April 1994, Art. 93 (1).
281 Netherlands, Board of Legal Aid (*Raad voor Rechtsbijstand*), Enrollment conditions.
282 Croatia, The Rules on Permanent Court Interpreters (*Pravilnik o stalnim sudskim tumačima*) (2007), Official Gazette (*Narodne novine*) Nos. 150/05 and 16/07, 12 June 2008, Art. 2.
283 Czech Republic, The Chamber of Court Appointed Interpreters and Translators of the Czech Republic (*Komora soudních tlumočníků České republiky*), *How to become a court interpreter* (*Jak se stát soudním tlumočníkem*).

interpretation and translation and on keeping a diary that includes an exact record of services provided.[284]

Finally, some Member States also require a minimum number of years of professional experience in the field before an individual can be registered (for instance, Austria,[285] the Czech Republic,[286] France,[287] Slovakia,[288] and Slovenia[289]).

Alternative means of securing suitable LITs in countries with registers

Due to the need to secure interpreters and translators for a number of languages, often in an unplanned, urgent manner, alternative means of securing suitable LITs are available in nearly all Member States, even where use of a register is compulsory. This is particularly seen where rare languages are required. For example, in Slovakia, it was reported that there is only one official Farsi LIT, which means that courts often have to use ad hoc interpreters.[290] Alternative means can also be used when the cost of getting a registered interpreter or translator is considered excessive and disproportionate. In Germany, where using the register is not mandatory, several professional associations of judges and prosecutors have noted that for cost reasons, it is not uncommon for courts and police to use interpreters and translators who are not sufficiently qualified.[291]

Field perspectives: the LIT questionnaire

Top 3 suggestions reported by members of the European Legal Interpreters and Translators Association (EULITA), to be applied in case of difficulties to find a qualified/registered legal interpreter or translator:

- criminal justice professionals should build up their own network of reliable interpreters and translators;
- communication through a third language (= relay interpreting) is often an option in case of rare ("exotic") languages; and
- resorting to available persons with adequate language skills after checking on their command of the court-room language and obtaining information concerning their knowledge of the local legal system.

Source: FRA, 2015

One alternative way of ensuring communication in the course of criminal proceedings is through a third language: if authorities establish that both the suspected/accused person and the LIT have a third language in common, then this language is used. Indeed, Recital 22 of the directive explicitly mentions the option of using any other language the suspect or accused person speaks or understands. Data from the questionnaire sent to LIT associations in 19 Member States (the LIT Questionnaire) show that criminal practitioners in four Member States (Austria,[292] Croatia,[293] Germany and Slovakia) in practice also rely on third languages to communicate with accused or suspected persons if a registered LIT cannot be sourced.

Some Member States, such as Austria, France and the Netherlands, use alternative lists of interpreters. Although these interpreters tend to be less qualified than their registered counterparts, their listing means that they are still subject to some form of quality control. In Austria, if an interpreter or translator from the Federal Ministry for the Interior is not available, the police may choose another interpreter, preferably one from the list of court-appointed specialists and interpreters maintained by the Federal Ministry of Justice.[294] In France, the list of translators and interpreters provided for by Article R.111-1 of the Code of Entry and Stay of Foreigners and Asylum can also be used.[295] An

284 Slovakia, Ministry of Justice (*Ministerstvo spravodlivosti SR*) (2004), Justice Ministry Regulation No. 490/2004 regarding implementation of Act No. 382/2004 on Appraisers, Interpreters and Translators and altering and amending certain laws (*Vyhláška č. 490/2004 Z.z. Vyhláška Ministerstva spravodlivosti Slovenskej republiky, ktorou sa vykonáva zákon č. 382/2004 Z.z. o znalcoch, tlmočníkoch a prekladateľoch a o zmene a doplnení niektorých zákonov*), 23 August 2004, Art 9.

285 Austria, Federal Act on court appointed experts and interpreters (*Bundesgesetz über die allgemein beeideten und gerichtlich zertifizierten Sachverständigen und Dolmetscher*), 1975, § 14 (1).

286 Czech Republic, Act on Experts and Interpreters (*Vyhláška k provedení zákona o znalcích a tlumočnících*), 17 April 1967, Section 4.

287 France, Decree No.2004-1463 on court experts (*Décret n°2004-1463 du 23 décembre 2004 relatif aux experts judiciaires*), 23 December 2004, Art. 2.

288 Slovakia, Act No. 382/2004 on Appraisers, Interpreters and Translators (*Zákon č. 382/2004 Z.z. o znalcoch, tlmočníkoch a prekladateľoch*), 26 May 2004, Art. 5 (e).

289 Slovenia, Courts Act (*Zakon o sodiščih*), 13 April 1994, Art. 93 (1).

290 Slovakia, Act No. 382/2004 on Appraisers, Interpreters and Translators (*Zákon č. 382/2004 Z. z. o znalcoch, tlmočníkoch a prekladateľoch*), 26 May 2004, Art. 15.

291 New Associaton of Judges (*Neue Richtervereinigung – Zusammenschluss von Richterinnen und Richtern, Staatsanwältinnen und Staatsanwälten e.V., NRV*) (2013).

292 Bachner-Foregger, H. (2014), Rz 11; representative of the Higher Regional Court of Graz.

293 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*) (2014), Official Gazette (*Narodne novine*) Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13,145/13, and 152/14, 17 December 2014, Art. 8, para. 3.

294 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO),* BGBl. Nr. 631/1975, §126 (2a).

295 France, Code of Criminal Procedure (*Code de procédure pénale*), Art. D 594-11.

unlisted interpreter or translator can only be used if these lists do not contain information about a suitable, available interpreter or translator. In the Netherlands, to address the lack of interpreters and translators for some less common languages, the Bureau for Sworn Interpreters and Translators, which manages the official register, also has an alternative list. This includes interpreters and translators who do not meet the requirements of the official register, but do meet the more lenient requirements for inclusion on the alternative list – such as level B2 instead of level C1 language proficiency. The alternative list is disclosed in a publicly accessible database on the Bureau for Sworn Interpreters and Translators' website.[296]

Research shows that, in three Member States – the Netherlands, Romania and Sweden[297] – police officers who speak the required language are used in practice. However, the Romanian High Court recently held that police officers are not authorised to translate transcripts of recordings – this could be grounds for partial nullity as an authorised translator should be used.[298] Some practitioners in Croatia,[299] Poland,[300] and Slovenia[301] indicated that, in the absence of a court interpreter for a particular language, authorities ask for recommendations from linguistic departments of universities. Estonian authorities have contacts with embassies and universities, and reach out to these when the need arises. In Greece, in practice, when a registered interpreter or translator cannot be sourced for a particular case, the interpretation may very well be provided by a person present in the courtroom, to ensure that it can be provided quickly and inexpensively. In the case of particularly rare languages, the parties themselves and their legal counsel are charged with securing an interpreter. In Germany, in criminal proceedings that took place in Hamburg in 2012 against Somali pirates accused of attacking a German ship, authorities appointed three taxi drivers from Flensburg (Germany) for interpretation into a rare Somali dialect.[302] Practitioners in Hungary also mentioned the practice of using family members to interpret/translate in the most exceptional cases.[303] Similarly, in Latvia, interpreters/translators should have no personal interest in the criminal case, but family members may be called upon when there is no other way to ensure interpretation/translation.[304] In *Baytar v. Turkey,* the ECtHR found a violation of Article 6(3)(e) of the ECHR where a judge failed to verify the skills of the interpreter, who was a member of the applicant's family waiting in the corridor.[305]

FRA's findings reveal that alternative means of securing suitable LITs are not accompanied by the same level of official and harmonised quality safeguards present in relation to official LIT registers. Yet some Member State practices or rules are worth highlighting as they provide for certain types of safeguards in some cases – for example, in Cyprus, Finland, Poland, Slovakia and Slovenia. In Cyprus, the police refer to a system of checks in the police station which obliges police officers, when an interpreter for a particular language cannot be located, to secure permission from their police director or assistant police director before contacting an interpreter whose name does not appear on the register.[306] In such a case, police must complete a special form, supported by minutes that explain the need for calling the particular interpreter. In Poland, the Supreme Court's case law provides some guidance: the authority calling an ad hoc, unregistered interpreter or translator is obliged to assess his or her foreign language skills by taking into account the difficulty of the interrogation.[307] According to the relevant law in Slovenia, the courts may use unregistered interpreters or translators, or even native speakers of required rare languages. In such situations, these interpreters and translators are required to swear before the court that they will translate the questions put to the defendant, and their answers, with precision.[308] Similarly, in Slovakia, all registered interpreters and translators have to swear an oath, which includes references to integrity and confidentiality.[309] In Finland, the National Police Board instructions[310] on the interpretation and translation of foreign languages in criminal investigations and when applying coercive measures instruct the courts and criminal investigation authorities to assess the suitability of each individual LIT. For this assessment, the criminal investigation authority can use the Finnish Association of Translators and Interpreters' instructions for legal interpretation.[311]

296 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering*), 19 March 2015, Art. 276, para. 3.
297 Sweden, desk officer at the Swedish Police section for EU coordination.
298 Romanian High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*), Decision no. 39/A/2015 (*Decizia nr. 39/A/2015*).
299 Croatia, representative from the Municipal State Attorney's Office in Zagreb.
300 Poland, judge.
301 Slovenia, criminal law judge.
302 Germany, representative from the Criminal Law Committee of the German Bar Association (DAV).
303 Hungary, criminal judge, Pest Central District Court.
304 Latvia, representative from the Latvian Council of Sworn Advocates.
305 ECtHR, *Baytar v. Turkey*, No. 45440/04, 14 October 2014.
306 Cyprus, Police Regulation N. 5/48, para. 2(2); representative from the office of the Chief of Police.
307 Poland, decision of the Supreme Court, 10 December 2003, V KK 115/03.
308 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku*, *ZKP*), 13 October 1994, Art. 233.
309 Slovakia, Act No. 382/2004 on Appraisers, Interpreters and Translators (*Zákon č. 382/2004 Z. z. o znalcoch, tlmočníkoch a prekladateľoch*), 26 May 2004, para. 5 (7).
310 Finland, the National Police Board (*Poliisihallitus/Polisstyrelsen*) (2013), *Vieraskielinen tulkkaus ja kääntäminen esitutkinnassa ja pakkokeinoja käytettäessä*, Regulation 2020/2013/4104 (*määräys*), 28 November 2013.
311 *Ibid.*

2.4.2. Other mechanisms for securing LIT services

As highlighted above, not all Member States have chosen to establish a register(s) of independent interpreters and translators. Indeed, in Latvia, in the course of negotiations on the law transposing the directive, creating a register was expressly ruled out as this is perceived as a recommendation rather than a requirement.[312] Instead, other mechanisms are in place for those Member States that have not established registers to secure LIT services.

Several Member States – including Belgium, Italy,[313] Lithuania, Malta,[314] and Portugal[315] – have various informal (unofficial) lists that list interpreters and translators with different minimum registration requirements. Although such unofficial lists can help criminal justice practitioners choose as qualified an LIT as possible, the unofficial status of these lists often means that selection criteria is not clearly set out or harmonized across the country, and the required standards are often very lenient. In Malta, for instance, professionals from the court registry confirmed that the court can simply employ trusted persons or contact private companies that have interpreters and/or translators when it comes to rare/lesser known languages.[316]

Field perspectives: the LIT questionnaire

"[T]here must be x informal 'registers', in the form of lists in drawers across courts, etc, personal and informal, whose criteria are only known to their authors – ie, no formal/minimal educational/professional requirements or safeguards."

Manuel Sant'Iago Ribeiro, coordinator of SNATTI's Advisory Board, SNATTI-Sindicato Nacional da Actividade Turstica, Tradutores e Interpretes, Portugal

Source: FRA, 2015

Promising practice

Training legal interpreters and translators for their work in courts

In Belgium, training programmes aim to improve the quality of interpretation in judicial proceedings. Since 2000, passing the programme is compulsory to be fully included on the list of sworn interpreters used in three judicial districts: Turnhout, Antwerp and Mechelen. The training programme consists of a 150-hour course covering five modules: a legal interpreting module, a legal module, a legal translation module, a police module, and a terminology module.

Training offered by interpreting schools in Belgium rarely focuses on the legal field, producing graduate interpreters with no qualifications for legal interpreting. The Chamber of Translators and Interpreters organised its first training session in 2009. Implementing training programmes with a strong focus on the legal field could be considered a promising practice as doing so raises awareness about the specificities of judicial proceedings among interpreters and translators. Using a register with highly trained sworn interpreters guarantees a standardised quality of interpretation and translation in judicial proceedings.

Source: Belgian Chamber of Translators and Interpreters.

Lithuanian district courts, district administrative courts and regional courts have their own lists of interpreters, but other courts assign interpreters through public procurement procedures.[317] Several other Member States, such as Ireland,[318] Spain[319] and the United Kingdom, also outsource the selection of interpreters and translators to private companies.[320] In this context, it is important for the authorities procuring these services to maintain a proper balance between procuring services from the lowest bidder and ensuring sufficient quality, requiring minimum qualifications other than merely speaking the suspect's/accused's language in addition to the language of proceedings.

312 Latvia, Draft Law on Amendments to the Criminal Procedure Law (*Likumprojekts 'Grozījumi Kriminālprocesa likumā'*), 22 November 2012.
313 Italy, Italian Criminal Procedure Code, Art. 2 of Legislative Decree No. 32/2014.
314 Malta, representative from the Court Registry.
315 Portugal, representatives from the General Prosecution Office (PGR) and the Directorate General Justice Administration (DGAJ); Jerónimo, P. (2013), p. 21.
316 Malta, representative from the Court Registry.
317 Lithuania, Human Rights Monitoring Institute (*Žmogaus teisių stebėjimo institutas*), Letter to the Minister of Justice (*Teisingumo ministrui*), 29 April 2013, p. 3, 4, 7 and 8.
318 Ireland, Courts Service, *Annual Report 2013*, p. 11; Tenders Electronic Daily, Contract award notice, *AUG370295 -- Request for Tenders ("RDT") for Provision of Managed Interpretation Services Contract Award;* Public Affairs Ireland, Issue no.100, Mary Phelan, M. (2014).
319 Spain, police inspector; court clerk of Madrid's Instruction Court No. 2; criminal court judge.
320 United Kingdom, criminal practitioner.

Field perspectives: the LIT questionnaire

"Interpreters in Ireland who work in the courts are people who speak English and another language and who are willing to work for €15 per hour in courts or for €18 in police stations and not be paid for transport or travel time. They are not tested in any way to establish if they can actually interpret. There is no training and no testing. Interpreters are provided, but what use is an interpreter who can't interpret?"

Mary Phelan, Chairperson, Irish Translators' and Interpreters' Association (ITIA)

Source: FRA, 2015

To ensure that LITs selected by private companies are of a suitable quality and to ensure their independence, it is essential for criminal justice authorities to put in place relevant oversight and monitoring mechanisms.

Promising practice

Ensuring the quality of LITs in Northern Ireland

In Northern Ireland (similar to the system in England and Wales), contractors are required to provide – and update – lists of available/suitable interpreters to the Contracts Management Team at the Northern Ireland Courts and Tribunals Service (NICTS). Contractors are responsible for the professional development, accountability and quality of all interpreters used to provide the service and must routinely update the NICTS about how this is being managed. Performance monitoring systems have been put in place by the NICTS contract manager, including 6 monthly contract review meetings, bi-monthly performance review meetings and weekly exchanges and resolution of issues with the provider. Contractors are also required to provide the NICTS contract manager with monthly performance reports so that they can assess performance.

Source: Northern Ireland Courts and Tribunals Service.

Some EU Member States' laws specify that only qualified interpreters and translators can be summoned during criminal proceedings. In Hungary, this means that LITs have to obtain a degree in translation and interpretation and hold an interpreter's card issued by the competent local authority or a certificate attesting their capability to translate, issued by the state-owned Hungarian Office for Translation and Attestation Ltd.[321]

321 Hungary, criminal lawyer.

Promising practice

Guidelines for LITs about their work in courts

In Latvia, a handbook for court interpreters provides valuable information and advice to interpreters and translators. It provides information about the basics of interpretation/translation and about study opportunities in Latvia, and also provides an introduction to working within the court system. The handbook highlights the role of interpreters/translators within the court system and informs interpreters/translators about the normative regulation of their work. In addition, it discusses professional ethics, and provides information about other countries' codes of ethics for court interpreters and translators (given that no such code exists in Latvia). It also provides good practice guidelines, and familiarises readers with practices in other countries and common lessons learned. The handbook is available online free of charge.

*Source: State language centre (Valts valodas centrs) (2015), Handbook for court interpreters (*Rokasgrāmata tiesu tulkiem*).*

Various other soft-law measures, such as ethics codes or codes of conduct, also play an important role in LIT quality assurance, particularly in countries without official registers. For example, in Sweden, interpreters and translators must follow ethical rules[322] developed by the Legal, Financial and Administrative Services Agency.[323] The national associations of legal interpreters and translators and their European networks often help to develop such codes.

322 Sweden, Legal, Financial and Administrative Service Agency *(Kammarkollegiet)* (2004. Rev.2011) and (1999. Rev.2010).

323 Sweden, Legal, Financial and Administrative Service Agency (2004. Rev.2011).

Promising practice

Developing a common quality standard for the LIT profession

Italy has adopted a technical regulation on interpretation and translation-related professions that was developed by the Italian National Unification Organisation (*Ente Nazionale Italiano di Unificazione*, UNI) in cooperation with associations representing interpreters and translators, especially those working for judicial bodies. The regulation contains quality standards for translation and interpretation-related professions to be implemented on a voluntary basis. All interpreters and translators may try to obtain the UNI certification, which assesses the quality of interpretation/translation services. This initiative is particularly useful because there is no official LIT register in Italy.

*Source: Non-regulated professions - Qualified professionals operating in the field of translation and interpreting - Knowledge, skill and competence requirements (*Attività professionali non regolamentate - Figure professionali operanti nel campo della traduzione e dell'interpretazione - Requisiti di conoscenza, abilità e competenza*), 10 September 2015.*

The European-level association EULITA, which represents 30 professional associations in 20 EU Member States, has developed its own code of ethics for legal interpreters and translators working in judicial contexts or similar settings, such as pre-trial proceedings (i.e. interviews with police and prosecution officers, consultations with defence lawyers), court hearings and post-trial interventions. According to this code, which was accepted by all EULITA members, the professional ethics of legal interpreters and translators derive directly from the principles defined in the Universal Declaration of Human Rights, the ECHR, the EU Charter as well as Directive 2010/64/EU. It covers issues such as solidarity and professional competence, accuracy, obstacles to performance quality, impartiality, confidentiality and fair conduct.[324]

2.4.3. Working conditions and their effect on the quality of interpretation and translation

FRA's research shows that the actual working conditions of LITs, although not covered by Directive 2010/64/EU as such, have an important impact on the quality of the interpretation and translation provided. In addition to ensuring that only appropriately qualified legal interpreters and translators work in this field, it is important to make sure in practice that LITs are able to work in an environment that allows them to deliver high-quality services and provide efficient and effective communication during criminal proceedings.

Many issues identified throughout the research show how important it is to ensure that criminal justice professionals are sufficiently aware of the specificities of criminal proceedings in which LIT services are needed. Such awareness will allow them to use the services of LITs in the most effective way possible; increase possibilities for LITs to deliver high-quality services in the course of proceedings; and help monitor and assess the quality of LIT services, including where complaints about the quality are submitted. Article 6 of Directive 2010/64/EU also highlights the need for Member States to pay special attention to the particularities of communicating with the assistance of an interpreter when delivering training to judges to ensure efficient and effective communication.

324 More information is available on the EULITA website.

Promising practice

Developing policies on interpretation to ensure high quality services in courts

In Sweden, the District Court of Södertörn established a policy on using interpretation services following a series of 20 focus interviews asking specialised legal interpreters for suggestions on how the court could help interpreters produce high-quality work, in combination with the applicable legal provisions for interpreters and the guidelines for good interpreting practice. The policy focuses on four basic themes:

- How to book an interpreter (to ensure interpreters with legal specialisation and the right language and dialect, etc.)
- Preparation before the interpretation (access to material, checking of interpretation equipment, etc.)
- The court's treatment of interpreters during court hearings (time for introduction, awareness of the need for breaks, etc.)
- Service and safety (awareness of safety risks for interpreters, break room, etc.)

The effort shows that small changes can improve the quality at all stages, including the initial booking of the interpreter. While this promising practice is only in place in the District Court of Södertörn, the development of a policy based on first-hand knowledge and experiences of interpreters can help build awareness of the importance of interpretation and of how courts can work with interpreters in a professional manner.

*Source: Sweden, District Court of Södertörn, Interpreter Policy, 21 August 2012. See also Seven proposals for a more effective use of interpreters in courts (*Sju förslag för effektivare användning av tolkar i domstol*), released by the Swedish Agency for Public Management (*Statskontoret*) in January 2015.*

Promising practice

Guidelines for more effective communication with legal interpreters and translators

The European Legal Interpreters and Translators Association (EULITA) and the European Criminal Bar Association (ECBA) jointly agreed on a *Vademecum for magistrates, prosecutors, attorneys and legal interpreters*, containing guidelines for achieving more effective communication with legal interpreters and translators. These guidelines are based on practical experiences and address the following issues:

- Selecting the interpreter
- Information on interpreting
- Seating in the courtroom
- Short presentation of the actors in the proceedings
- Written texts presented at hearings
- Interpreting the hearing for foreign-language parties
- Interrupting an interpretation
- Breaks
- No transfer of judicial tasks to the court interpreter
- Cultural competence of legal interpreters

Source: EULITA website.

Practitioners also emphasised how important it is from a quality perspective to ensure that – whenever possible – police, prosecutors or courts provide LITs with sufficient background information about a case in advance. For example, it should not be considered sufficient to forward to an interpreter a summons to appear at court that only mentions the name of the accused/suspect, their nationality, and the relevant Article of the national criminal law.[325] Without additional information about the case, interpreters cannot prepare their work and often have to improvise during proceedings. This is particularly important in proceedings that include specific technical language.

325 Jacobs, A. P. (2015).

Field perspectives: the LIT questionnaire

Many legal translation and interpretation associations stated that there are no procedures in place to prepare interpreters or translators for specific cases. This can be a problem when they involve specific medical or technical language.

"*Interpreters are assumed to need no preparation for a trial. Therefore, they rarely get prior information about the case, including the alleged offence or the type of offender/victim. Interpreters are mainly regarded as [...] individuals whose only job is to copy words from one language into another (a linguistic photocopier).*"

Bente Jacobsen, Vice-chairman, Association of Danish Authorized Translators and Interpreters (*Translatrforeningen*) (Denmark)

Source: FRA, 2015

EULITA members also noted concerns about long waiting and travel hours and the lack of thought given to LITs' safety needs in police stations, prisons and courts. These issues make LIT jobs less popular, and, in the long run, can result in an insufficient number of registered, well-qualified translators and interpreters, as well as the increased use of ad-hoc LITs outside official registers. Using technical solutions (communications technology) to access LIT services remotely was highlighted as a practical way to tackle long waiting or travel hours, [326] provided that sufficient audio/visual quality can be guaranteed and body language – which can be very important – can be captured. The importance of carefully balancing the need to keep costs of interpretation and translation low with ensuring the quality of services was also noted.[327]

2.5. Access to remedies

2.5.1. Challenging refusals to provide interpretation and translation or the quality of provided services

According to Article 2(5) of Directive 2010/64/EU, suspects and accused persons should have the right to challenge decisions finding that there is no need for interpretation or translation. Additionally, pursuant to Article 3(5), where interpretation or translation is provided, they should be given the opportunity to complain about the quality of the services.

The directive does not require establishing a separate mechanism for lodging and examining complaints for this purpose.[328] Member States can decide how to approach this issue – for example, by using existing systems for remedies to accommodate this right. Although the directive gives no further detail regarding the type of authority to hear these complaints, Article 47 of the EU Charter requires such complaints to be subject to effective judicial oversight. Findings show that some Member States – for example, Bulgaria, Greece, Luxembourg, Slovenia and the United Kingdom – introduced specific procedures in their laws when transposing Directive 2010/64/EU. In Bulgaria, during the pre-trial phase, decisions of the investigative authority finding that a suspect or accused person has sufficient command of Bulgarian and does not need interpretation can be challenged before the prosecutor in charge of the case, whose decision is final. During the trial, a court ruling establishing that a defendant does not need interpretation can be challenged before a higher court.[329] The Greek Code of Criminal Procedure provides that suspects or accused persons have the right to object to a decision that no interpretation or translation is needed, and their complaint is to be examined by a prosecutor or a court (depending on the stage of proceedings).[330] Legislation in Luxembourg contains specific provisions about the possibility to complain about the absence, or quality, of interpretation and translation.[331] The same applies in Slovenia – explicit provisions allow persons to complain about interpretation and translation with regard to both decisions refusing it and its quality.[332] Similar rules apply in the United Kingdom.[333]

326 The Swedish Agency for Public Management *(Statskontoret)* released seven proposals for a more effective use of interpreters in courts (*Sju förslag för effektivare användning av tolkar i domstol*) in January 2015.

327 More information is available on the EULITA website.

328 Directive 2010/64/EU, Recital 25.

329 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 395б, para. 2 and 3.

330 Greece, Code of Criminal Procedure (CCP), as amended by Art. 2 (1) of Law No. 4236/2014. Art. 236A of the CCP was inserted after Art. 236 pursuant to Art. 4 of Law No. 4236/2014.

331 Luxembourg, Criminal Procedure Code (*Code d'Instruction Criminelle*, CIC), 15 April 2015, Art. 3-2(8) (interpretation) and Article 3-3(8) (translation), as proposed by the Bill 6758. If approved, these articles will be included in the general part of the CIC and therefore apply to all stages of the procedure.

332 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art. 8(1-2).

333 United Kingdom, England and Wales, HM Government (2014) Criminal Procedure Rules and Criminal Practice Direction (SI 2014/1610) (14 October 2014) Rule 3.9(5)(d)(i); Scotland, HM Government (2014) Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014 (19 May 2014), regulation 3(2) and 5(2). 'Appropriate Constable' is defined in regulation 2(1) Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014; Northern Ireland, UK, HM Government (2015) Department of Justice for Northern Ireland Police and Criminal Evidence (Northern Ireland) Order 1989 Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 1 June 2015, para. 13.10D.

In the majority of Member States, however, regular procedures for challenging procedural decisions or actions apply – meaning suspects or accused persons are free to challenge any decision of law enforcement authorities, including decisions about interpretation or translation. All procedural complaints are examined in accordance with the same rules and there are no procedures to deal specifically with complaints about interpretation or translation. For example, according to Austrian law, every person who claims that their rights – including to interpretation and translation – were violated in the course of criminal proceedings can raise an objection.[334] Similarly, in the Czech Republic, complaints about the absence or quality of interpretation and translation are admissible as general complaints against "any decisions" of law enforcement authorities.[335] In Latvia, the legislation also does not explicitly provide for a right to complain about the quality of translation or interpretation.[336] It follows that a complaint of unfairness might be the only option.

In some of these states, complaints raising these issues can only be admitted at the conclusion of proceedings. In states such as Belgium, Croatia, Germany, Ireland, Italy and Poland, the failure to provide interpretation or translation would only constitute grounds for appeal. For example, in Belgium, defendants can raise the absence or quality of interpretation or translation in an appeal or cassation complaint.[337] In Germany, once the main proceedings have been opened, complaints against most decisions of the adjudicating court – including decisions about interpretation – are inadmissible prior to delivery of a judgment.[338] The accused can only appeal against the judgment in accordance with the standard rules on appellate procedure. Thus, prior to the conclusion of the proceedings, there is no procedure for challenging refusals of interpretation.[339] The Croatian Criminal Procedure Act does not provide for any specific procedure, emphasising only that the failure to provide interpretation or translation will always be regarded as a substantial violation of criminal procedure that represents a valid basis for appeal.[340] No specific mechanism is provided for in Irish law. If the police refuse interpretation, this can be challenged in court by mentioning it to the trial judge. If a trial judge refuses interpretation or translation for court proceedings, this individual decision can be challenged by way of judicial review (it may also later form the basis for an appeal against a conviction or sentence).[341] Similar possibilities exist in Italy[342] and in Poland.[343] According to Polish law, suspects/accused persons may request the person in charge of the proceedings to exclude a translator or an interpreter due to a lack of expertise or impartiality, and to appoint another one.[344] If the interpreter or translator is not replaced, the suspect/accused person may file an appeal claiming a violation of their defence rights. In Italy, the poor quality of a translation/interpretation service cannot be invoked in the course of the proceedings, but can be used as a ground to challenge a court judgment and invalidate the proceeding.[345]

Promising practice

Guidelines on how to proceed when interpretation or translation is denied

A Legal Experts Advisory Panel/Fair Trials paper on the Directive on interpretation and translation includes guidelines on how to proceed in practice when interpretation or translation is denied. The paper presents practical steps defendants or their lawyers can take when national laws provide for specific mechanisms as well as when no such mechanism is in place. In essence, parties are advised to always:

- complain to a higher authority
- record the basis for the objection
- when no mechanism for complaints exists, use arguments at a later stage and recall relevant CJEU and ECtHR case law.

Source: Legal Experts Advisory Panel/Fair Trials Europe, Roadmap Practitioner Tools; Interpretation and Translation Directive, March 2015.

334 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO*), 1975, paras. 49, 56 and 106 (1).
335 Czech Republic, representative from the criminal justice department.
336 Latvia, *The registries of interpreters/translators and organization of work in the European Union* (*Tiesu tulku/tulkotāju reģistri un darba organizācija Eiropas Savienībā*), 22 October 2014, p. 44.
337 Belgium, Judicial Code (*Code judiciaire / Gerechtelijn wetboek*), 1967, Arts. 1050–1121.
338 Germany, Higher Regional Court (*Kammergericht*) Berlin, 1 AR 1424/96, 11 August 1997; Christl, E. (2014).
339 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, Section 305 and 333.
340 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*) (2014), Official Gazette (*Narodne novine*) Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13,145/13, and 152/14, 17 December 2014, Art. 468, para. 1/3.
341 Ireland, representative of An Garda Síochána.
342 Italy, representative from the Association for Legal Studies on Immigration (ASGI).
343 Poland, judge.
344 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 196 para. 3 in conjunction with Art. 204 para. 3(e).
345 Italy, representative from the Association for Legal Studies on Immigration (ASGI).

An important aspect of the directive is that the competent authorities should be able to replace an appointed interpreter when the quality of the interpretation is considered insufficient.[346] If the complaint is well-founded, the interpreter or translator will generally be replaced in the majority of EU Member States. For example, in Austria, if there are doubts regarding the expertise of interpreters or translators or parties raise objections, the authority who nominated them will replace them.[347] In Finland, suspected or accused persons can ask the court to assign a new interpreter or translator if they think that the quality of the interpretation does not ensure the legality of the proceedings – but the legislation mentions no legal obligation for relevant national authorities to inform suspects/accused persons of this right.[348]

Promising practice

Offering specific avenues for challenging the quality of interpretation or translation

Dutch legislation provides for a procedure that deals with complaints about the performance of sworn interpreters or translators. A special committee established by the Minister of Security and Justice addresses such complaints.

*Source: Netherlands, Sworn Interpreters and Translators Act (*Wet beëdigde tolken en vertalers*), Articles 16-27.*

Practitioners note that it is not always easy for individuals to assess the quality of translation and interpretation services. It is often difficult for parties to proceedings to gauge whether their wording has been translated correctly and in an unbiased manner. An accused who does not understand a translation cannot assess whether it has been translated correctly – and neither can a defence counsel who does not have command of the foreign language.[349]

Promising practice

Requiring legal practitioners to alert authorities about interpretation and translation services of insufficient quality

In Hungary, lawyers have a duty to alert the presiding judge or the competent investigating authority if they believe that the insufficient quality of interpretation or insufficient independence of an interpreter may hinder a suspect's or accused person's right to a fair trial. In that case, the presiding judge or a police officer calls for a new interpreter.

A cautious approach is particularly important when ad hoc interpreters – persons who have a satisfactory command of the relevant language but do not hold a qualification in interpretation – are used. It is important to ensure both that they have linguistic skills and that they are able to correctly use the legal terminology cited in criminal proceedings.

*Source: Hungary, Official of the Ministry of Justice, Head of Secretariat of the Deputy Secretary of State for Judicial Cooperation in the EU (*Titkárságvezető Európai Uniós Igazságügyi Együttműködésért Felelős Helyettes Államtitkárság*).*

Finally, Directive 2010/64/EU explicitly requires national authorities to record the provision of interpretation and translation – a safeguard for ensuring the practical effectiveness of the right to interpretation and translation. Such recordings are particularly essential as evidence during procedures challenging the quality of translation and interpretation services provided. In line with Article 7 of the directive, all Member States appear to have recording procedures that note that interpretation and translation have occurred and in which form. The majority of Member States record this in writing (for the police questioning stage as well as court hearings), in the form of reports or minutes. Some Member States additionally provide for audio or video recordings of court hearings

346 Directive 2012/13/EU, Recital 26.
347 Hinterhofer, H. (2011), Rz 57.
348 Finland, legal counsellor for the Ministry of Justice.
349 Germany, representative from the Criminal Law Committee of the German Bar Association (DAV).

and police interrogations (Austria,[350] Croatia,[351] Finland,[352] Hungary,[353] Lithuania,[354] Portugal,[355]and Spain[356]).

Recordings are a particularly important safeguard when suspects/accused persons waive their right to translation pursuant to Article 3(8) of the directive. Recordings should be completed in a manner that makes it possible to establish whether a particular waiver satisfies applicable requirements – namely, that the person giving the waiver received prior legal advice or otherwise obtained full knowledge of the consequences of the waiver, and that the waiver was unequivocal and voluntary.

Conclusions and FRA Opinions

Directive 2010/64/EU lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings, with a view to enhancing mutual trust among Member States. The directive primarily aims to ensure that suspects and accused persons who do not speak or understand the language of criminal proceedings in which they are involved receive adequate linguistic assistance at no charge. This is absolutely necessary to allow them to fully exercise their right to defence and to safeguard the fairness of the proceedings. Basis on its findings, FRA has formulated opinions offering concrete guidance on how EU Member States can safeguard the effective protection of the procedural rights of suspected and accused persons in line with Directive 2010/64/EU.

Assessing the necessity of interpretation and translation more effectively

Most EU Member States' systems generally lack detailed guidance on how to assess the need for interpretation and translation – for example, on how a competent authority should determine what minimum level of language knowledge a person should have to allow them to "fully" understand and follow criminal proceedings. Currently, the actual practices of different authorities can vary considerably.

FRA Opinion 1

When implementing their obligations concerning suspected and accused persons' right to interpretation or translation under Directive 2010/64/EU, EU Member States should consider developing practical guidance on how to assess the need for interpretation and translation. When developing such guidance, competent authorities should consider consulting relevant national associations that represent legal interpreters and translators who have practical experience with providing such services in criminal justice proceedings.

Guiding authorities on the importance of translating essential documents

Not all Member States' legislation lists the essential documents of which written translations have to be provided to safeguard the fairness of proceedings – such as judgments, charges or indictments, and decisions depriving persons of their liberty. Where such lists do not exist, decisions on which documents have to be translated are largely made on a case-by-case basis. Practitioners also note that, in practice, authorities often provide oral rather than written translations of essential documents – particularly once someone is represented by a lawyer –due to time and budget constraints, among other reasons.

350 Austria, representative from the Higher Regional Court Graz.
351 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*), 17 December 2014, Art. 290, para. 2.
352 Finland, Criminal Investigation Act (*Esitutkintalaki/förundersökningslag*) 805/2011, 1 January 2014, Chapter 9, Section 7 (1).
353 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by paragraph 28 of Act LXXII of 2014 (XXX), 1998, Art. 302 (1).
354 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 179.
355 Portugal, Criminal Procedural Code (*Código de Processo Penal*), 17 February 1987, Art. 364 (1).
356 Spain, Code of Criminal Procedure (*Código Procedimiento Penal*) as amended by Organic Act 5/2015, which modifies the Code of Criminal Procedure and Organic Law 6/1985, of 1 July, on the Judiciary, in order to transpose Directive 2010/64/EU, of 20 October 2010, regarding the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of 22 May 2012, regarding the right to information in criminal proceedings (*Ley Orgánica 5/2014, de 27 de abril, por la que se modifican la Ley de Enjuiciamiento Criminal y la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, para transponer la Directiva 2010/64/UE, de 20 de octubre de 2010, relativa al derecho a interpretación y traducción en los procesos penales y la Directiva 2012/13/UE, de 22 de mayo de 2012, relativa al derecho a la información en los procesos penales*), 28 April 2015, Art. 123 (6).

FRA Opinion 2

To enhance legal certainty and clarity, and in line with the overall objective of strengthening the protection of rights of suspects and accused persons under Directive 2010/64/EU, EU Member States should consider introducing specific lists of essential documents – and providing guidance on how to apply any exceptions. Extending such lists of essential documents beyond the three types of documents listed in Article 3 of Directive 2010/64/EU, which lays down minimum common standards in this regard, is to be encouraged given that written translations constitute an additional fair trial safeguard.

Ensuring that suspected or accused persons can effectively communicate with their legal counsel

FRA's findings show that the extent to which interpretation is provided for communication between a suspected or accused person and their lawyer varies from state to state, and that several Member States have introduced specific limitations. For example, in some legal systems, interpretation services for communicating with legal counsel are provided for a limited length of time only, or only for specific types of procedural actions. In other Member States, interpretation for communication with legal counsel is made largely dependent on the provision of legal aid, or coverage of the costs of such interpretation is guaranteed only where interpreters are appointed by state authorities.

FRA Opinion 3

To safeguard the effectiveness of the right to a fair trial in line with the overall aim of Directive 2010/64/EU, EU Member States should consider ensuring that suspected and accused persons receive, at the very beginning of proceedings, explicit information about the availability of interpretation for communicating with their legal counsel. These should be outlined in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

Safeguarding the confidentiality of communication between suspected or accused persons and their legal counsel

FRA's findings show that using the same state-appointed interpreters to interpret both during police interrogations and communications between a defendant and their lawyer may present a conflict of interest. It may conflict with the principle of confidentiality of client-counsel communications. While relying on interpreters, who the police or other criminal justice authorities regularly use, can be beneficial in terms of availability, speed, and knowledge of the procedures, they can be unsuitable for interpretation in a client-counsel relationship, unless strict quality safeguards are put in place.

FRA Opinion 4

EU Member States should consider introducing specific safeguards to ensure that the confidentiality of communication between suspected or accused persons and their legal counsel is strictly respected and not jeopardised by the use of state-appointed interpreters.

Safeguarding the quality of interpretation and translation services

FRA's research shows that some Member States have set up registers of legal interpreters and translators. However, the minimal qualifications needed to be included in such registers can vary broadly both among and within states. In addition, there are no common standards on how to establish an effective register – for example, whether it is better to have one central register or multiple registers; who should maintain the register(s); and what they/it should include. This means that Member States have very different systems. Some have very minimal requirements for admission to a register; others have no requirements at all. As a result, the quality of services provided varies considerably, even when registers contain officially qualified interpreters and translators.

FRA Opinion 5

When establishing a register of legal interpreters and translators in line with Article 5 (2) of Directive 2010/64/EU, EU Member States should consider introducing relevant safeguards to maximise the quality of translation and interpretation services ensured through such a register. For instance, they should consider defining clear admission criteria, and providing for regular registration renewals, mandatory professional development for legal interpreters and translators, and special training for legal interpreters and translators who work with vulnerable groups. At the same time, EU Member States should consider making it mandatory for criminal justice authorities to use such registers when they need interpretation and translation services in the context of criminal proceedings.

Not all EU Member States have established registers of independent interpreters and translators, instead using alternative means to secure suitable legal interpreters

or translators. In fact, given that interpreters and translators have to be secured for a number of languages, and often in unplanned, urgent circumstances, nearly all EU Member States have alternative means of securing interpretation and translation services – even in countries with official registers. These often take the form of, for example, alternative lists of interpreters and translators with more flexible minimum registration requirements than those applicable to official registers. These requirements are not always clearly set out or harmonised across the country, and are often very lenient. Codes of conduct or ethic codes developed by national associations of legal interpreters and translators are an example of a promising practice that helps protect the quality of interpretation and translation services.

FRA Opinion 6

To ensure that the interpretation and translation provided meets the quality required under Directive 2010/64/EU, Member States could consider developing clear and binding rules on the conditions for using alternative ways of securing legal interpreters or translators. Such rules should include specific quality safeguards, such as a minimum level of education or years of experience to be included on alternative lists. Member States should also consider supporting other measures that help safeguard the quality of interpretation and translation services, such as codes of conduct and ethic codes specifying professional quality standards. National associations of legal interpreters and translators often voluntarily develop such codes. Using information and communication technology (ICT)-solutions or engaging in cross-border cooperation with other EU Member States could help ensure the quality of services even when appropriately qualified translators or interpreters are not available in a given country. In a cross-border context, criminal justice authorities could share resources, such as legal interpreters and translators available in their national registers.

3 Right to information in Member States' laws

3.1. Providing information on procedural rights

Directive 2012/13/EU lays down minimum rules with respect to information on rights of suspects or accused persons. National authorities can obviously provide further information on "other procedural rights as arising out of the Charter, the ECHR, national law and applicable Union law as interpreted by the relevant courts and tribunals".[357]

This chapter examines to what extent national legal orders currently reflect relevant aspects of the right to information as provided by Directive 2012/13/EU. It also presents available promising practices. In particular, the chapter focuses on:

- from which point in time the right to information about rights applies;
- what type of information and how promptly it is provided to a person suspected or accused of a crime;
- the existence and accessibility of a Letter of Rights when a suspect or accused person is deprived of their liberty;
- the extent to which access to materials of the case is provided during different stages of criminal proceedings;
- the existence of mechanisms to record the provision of information, and available remedies to challenge failures or refusals to provide information.

The right to information on rights provided under Articles 3, 4 and 5 of the directive differs in nature from the right to information about the accusation or the right of access to the materials of the case, set out in Articles 6 and 7. Indeed, access to information about one's rights is both a right in itself and a mechanism for claiming the rights. For example, the right to be informed about the accusation would be theoretical and illusory if suspects and accused persons were not informed that they have and can exercise such a right.

3.1.1. When does the obligation to inform suspects and accused persons about their rights arise?

According to Article 2 of Directive 2012/13/EU, the obligation to provide a person with information on their rights applies "from the time persons are made aware by the competent authorities that they are suspected or accused of having committed a criminal offence". However, the directive does not include rules on exactly when national authorities should make a person aware of their status as suspect – other than referring, in Recital 19, to the need to provide such information promptly and at the latest before the first official interview by the police.

According to ECtHR case law – which Recital 14 of the directive explicitly refers to for further guidance – national authorities are obliged to provide an individual with relevant information when they undertake measures that carry the "implication of a suspicion and which likewise substantially affect the situation of the suspect".[358] This indicates that the obligation to inform an individual about his or her rights arises when, for example, police or other relevant authorities decide to question a suspect as a witness first – despite their suspicions. The ECtHR has also ruled that guarantees apply to witnesses whenever they are in reality suspected of a criminal offence, as the formal qualification of the

357 Directive 2012/13/EU, Recital 20.

358 For example, ECtHR, *Panovits v. Cyprus,* 11 December 2008; ECtHR, *Padalov v. Bulgaria,* 10 August 2006; ECtHR, *Pischalnikov v. Russia,* 24 September 2009.

person is immaterial.[359] However, FRA's research shows that there are issues concerning the way distinctions between suspects and witnesses are made in practice, with suspects questioned as witnesses instead of being immediately deemed a suspect, even though it is already known that an investigation is running against them based on a reasoned suspicion that they committed the crime.[360]

In general, Member States' laws can be divided into two main groups: those that require information to be provided when a person acquires the status of a crime suspect, and those that require providing information about rights to individuals when they are deprived of their liberty.

Among the first group, the moment at which a suspect is informed varies depending on the organisation of the pre-trial phase of criminal proceedings and its different stages in a given state. To ensure that investigations are not prejudiced, national authorities in many countries have considerable margins of discretion as to when exactly they must inform criminal suspects that they are actually under investigation.

Some Member States in the first group have laws that refer in a general manner to the obligation to provide information about rights to every person subject to questioning with regard to whom there are strong or plausible reasons to suspect that they have committed or attempted to commit an offence. These include Croatia,[361] France,[362] Luxembourg,[363] the Netherlands,[364] Slovenia,[365] and the United Kingdom (England & Wales and Northern Ireland).[366] Under Malta's Criminal Code, this obligation exists towards persons from the time they are made aware by the police that they are suspected of having committed an offence, but also towards any other person who in the course of questioning by the police or other law enforcement authority becomes a suspect or an accused person.[367] Meanwhile, Finnish law explicitly states that every person to be questioned shall always be informed of his or her position in the criminal investigation before any questioning – for example, whether the person is a suspect or merely a witness. If the person is considered to be a suspect, authorities must provide them with relevant information on their defence rights.[368]

Some Member States' laws explicitly link the obligation to inform someone of their rights with issuing a specific written decision or written notification. This is the case, for example, in Bulgaria,[369] the Czech Republic,[370] Germany,[371] Hungary,[372] Lithuania,[373] Latvia,[374] Poland,[375] Portugal,[376] Romania,[377] Spain, [378] Slovakia,[379] and Sweden[380]. According to German law, authorities should provide a person suspected of an offence with information about their rights from the time of the first examination in which they bring a charge against the person.[381] The Bulgarian law also refers to the accused: authorities present the decree for bringing charges to the accused when enough evidence is gathered about their culpability. The accused is questioned only once the decree has been presented.[382]

359 ECtHR, *Brusco v. France*, No. 1466/07, 14 October 2010, para. 47.
360 Hungary, representative of defence counsels; Portugal, representative from the Portuguese Bar Association.
361 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*) (2014), Official Gazette (*Narodne novine*) Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13,145/13, and 152/14, 17 December 2014, Art. 208 (5).
362 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. 63-1.
363 Luxembourg, Chamber of Deputies, Bill 6758 strengthening the procedural guarantees in criminal matters.
364 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering*), 11 March 1979, Art. 27c, para. 1.
365 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku*, *ZKP*), 13 October 1994, Art. 148.
366 United Kingdom, HM Government (2014) Police and Criminal Evidence Act 1984(PACE) Code C Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers (2 June 2014), paragraphs 3.1. and 3.21; UK, UK, HM Government (2015) Department of Justice for Northern Ireland Police and Criminal Evidence (Northern Ireland) Order 1989 Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 1 June 2015, para. 3.21.
367 Malta House of Representatives, Criminal Code, 10 June 1854, Chapter 9 of the Laws of Malta, Art. 534A and 534AB.
368 Finland, Criminal Investigation Act (*Esitutkintalaki/förundersökningslag*) 805/2011, 1 January 2014.
369 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 15 (3), 55 (1), 179 (2), 236 (1) and (4), 219 (1) and (3).
370 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Art. 33, 158 and 160.
371 Germany, Act on Strengthening Procedural Rights of Suspected Persons in Criminal Proceedings (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren*), 2 July 2013.
372 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014, 1998, Art. 62 and 43(2)(f).
373 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 187 (1).
374 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.
375 Poland, Code of Criminal Procedure (*ustawa z dnia 6 czerwca 1997 r.– Kodeks postępowania karnego*), 6 June 1997, Article 71 (1).
376 Portugal, Criminal Procedural Code (*Código de Processo Penal*), 17 February 1987, Art. 58 (1) a).
377 Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legeanr. 135/2010 privind Noul Cod de ProceduăPenală)*, 1 July 2010, Art. 108 (2).
378 Spain, Code of Criminal Procedure as amended by Organic Act 5/2015 and Organic Law 6/1985, Art. 118.1.
379 Slovakia, Act No. 301 /2005 Code of Criminal Procedures (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 24 May 2005, Art. 121.
380 Sweden, Decree on Preliminary Investigations (*Förundersökningskungörelse (1947:948)*), 1 June 2014, paras. 12–12a.
381 Meyer-Goßner, L. and Schmitt, B. (2014), para. 114b No. 1.
382 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 219 and 221; judge from the Sofia City Court.

Where a notification of suspicion is provided in writing and contains the list of rights to which the suspect is entitled, its delivery to the relevant person usually represents the act of informing the suspect of his or her rights. In practice, such a list of rights is frequently based directly on the relevant provisions of the national criminal laws – meaning it often includes legal jargon, which limits the actual accessibility of the information (see Section 3.1.3).

As for the second group, a few Member States – such as Cyprus, Ireland,[383] and the United Kingdom (Scotland)[384] – have laws that refer to the obligation to provide information about rights to persons who have been deprived of their liberty – either when arrested or when detained. In Cyprus, for instance, the law refers to the arrest of a person effected for the purpose of bringing the person before the police for interrogation on reasonable suspicion of having committed an offence.[385] Commenting on actual practices in Ireland, a criminal practitioner noted that if a person attends a station voluntarily – i.e. they are not arrested and subsequently deprived of their liberty – they are not covered by the same safeguards, such as receiving a notice of rights, custody records or being advised on the right to a solicitor. None of these safeguards are required, and how much information a person receives from the Gardaí (police) is decided on a case-by-case basis.[386]

3.1.2. Extent of information provided

According to Article 3 of Directive 2012/13/EU, "Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights": the right of access to a lawyer; any entitlement to free legal advice and the conditions for obtaining such advice; the right to be informed of the accusation; the right to interpretation and translation; and the right to remain silent. The legal situation in the EU 27 (excepting Denmark) with respect to this issue can be divided into three main categories.

Some Member States' laws strictly follow – i.e. do not go beyond – the directive's minimum list of rights about which information is to be provided. These include Greece,[387] Lithuania,[388] Malta,[389] the Netherlands,[390] and Slovenia.[391]

The laws of a much bigger group of Member States require informing individuals not only about the five rights set out in Article 3 of the directive, but also about other procedural rights. These typically include the right to free legal aid (covering all costs of the proceedings under specific circumstances), the right to access case files, the right to present evidence, the right to challenge the acts of relevant authorities infringing upon person's rights and lawful interests, the right to file a complaint against a judicial approval of the concrete investigation methods, the right to file for cessation of an investigative procedure, the right to participate in main proceedings and the right to give consent to start settlement proceedings.

The list of rights of the third group of Member States do not seem to cover all rights set out in Article 3 – but may at the same time provide information about additional rights. These include Austria,[392] the Czech Republic,[393] Belgium,[394] Hungary[395] and Portugal.[396] Of the five rights specified in the directive, the rights most frequently missing from these lists include the right to free legal advice (for example, in Austria) and the right to interpretation and translation (for example, in Belgium, the Czech Republic, Hungary, and Portugal).

It is also worth highlighting some specifics about how information about rights is provided. At least two legal systems refer to specific circumstances under which some information does not have to be provided. For example, the law in France[397] specifies that suspects must be informed about the right to a lawyer (whose costs may be covered by the state subject to specific

383 Jean Tomkin, Solicitor, Sheehan and Partners, *The Rights to Know your Rights & Wrongs Alleged,* presentation at *JUSTICIA* European Rights Network Seminar *Know Your Rights Legal Training Event*, on 23 September 2013 at Law Society, Dublin, Ireland.

384 United Kingdom, HM Government (2014) the Right to Information (Suspects and Accused) (Scotland) Regulations 2014, regulation 3 (2).

385 Cyprus, Law on the rights of persons arrested and detained (*Ο περί των δικαιωμάτων προσώπων που συλλαμβάνονται και τελούν υπό κράτηση νόμος*), N.163 (I)/2005 as amended, Art. 3 (1) and 3 (2).

386 Ireland, solicitor.

387 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 99A (3).

388 Lithuania, Code of Criminal Procedure (*baudžiamojo proceso kodekso*), 15 May 2014, Art. 21, para. 4 and Art. 22, para. 3.

389 Malta House of Representatives, Criminal Code, 10 June 1854, Chapter 9 of the Laws of Malta, Art. 534AB (1).

390 Netherlands, Ministry of the Interior and Kingdom Relations & Ministry of Security and Justice (*Ministry of the Interior and Kingdom Relations & Ministerie van Veligheid en Justitie*) (2014), *You have been apprehended as a suspect and taken to the (police) station or another place for nterrogation. What are your rights?,* Version for adults; version for individuals 12–18 years old.

391 Slovenia, defence lawyer.

392 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO*), 1975, para. 49.

393 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Section 33.

394 Belgium, Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

395 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014, 1998, Art. 62 and 43 (2) (f).

396 Portugal, Criminal Procedural Code (*Código de Processo Penal*), 17 February 1987, Art. 61.

397 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. 61-1.

conditions) provided they are suspected of an offence for which a prison sentence can be imposed. Another example involves the right to interpretation and translation: in Hungary, the written information suspects receive notes the possibility of using, and making a statement in, their mother tongue – the translation of which has to be attached to the documentation of the case. However, it does not refer to the possibility of using other languages, or to the right to free interpretation or translation, or to the exact content of these rights.[398]

Finally, an important issue pointed out by practitioners is how much detail – if any – persons receive about these rights, especially with regard to how to concretely exercise them in practice. The data show that the situation across the EU differs widely. For example, the Minister of Justice of Poland introduced a model instruction on rights and obligations in 2014 to comply with the directive.[399] In Hungary, in practice, there may be ways for the police to circumvent basic procedural guarantees, such as the obligation to properly inform suspects of their rights and obligations before questioning.[400]

3.1.3. Format of information provided

Information provided pursuant to the right to information can only be practical and effective if it is in simple and accessible language, and Article 3(2) of Directive 2012/13/EU explicitly requires the information – whether oral or in writing – to be provided in such language. According to Recital 38 of the directive, this can be achieved by different means. These include non-legislative measures, such as appropriate training for competent authorities (particularly where information is provided orally), or by a Letter of Rights drafted in simple and non-technical language so as to be easily understood by a lay person with no knowledge of criminal procedural law.

Laws in quite a few Member States seem to use the wording of the directive, referring to accessible language that needs to be adapted to the needs of the persons concerned.

However, practitioners in several Member States confirm that information about rights, often provided in writing, is usually based directly on the actual wording of the relevant criminal law provision – and that accompanying oral explanations to adapt it to the actual circumstances are not common. In Romania, for instance, the written information provided to suspects and accused persons reproduces the actual criminal law provision, including the exact phrasing at the end of that provision, which mentions in general terms "and other rights set by law."[401] Even where the information is provided orally, this is often done by simply reading out the actual provisions of the law or technical forms containing legal jargon.

In Hungary, a practitioner reported that authorities do not provide information in an individualised manner that takes account of a suspect's special needs, nor in a simple and plain manner so that the persons concerned can truly understand its significance, relevance and meaning. Verification of whether a suspect understood the information provided is confined to asking for verification of understanding at the end of the reading. When the defence counsel is not present at questioning, it is likely that a suspect will understand even less. Cases were also reported by practitioners where, in the absence of defence counsel, investigative authorities failed to properly provide information on rights set out in the form.[402] A civil society representative in Lithuania noted that, according to established practice, there is a written list of rights for suspected and accused persons, which is based on the relevant provisions of the criminal procedural code. The relevant authority often reads out this list to individuals. Such a listing of rights using legal terminology and without any additional explanation about their content and about how these rights could actually be exercised often makes it difficult for individuals to exercise these rights in practice.[403]

However, some practices are worth highlighting because they seem to help individuals understand the information they receive about their rights. For example, in Finland**,** suspects receive written information about their rights via an information notice that avoids technical language and explains the rights and how to exercise them in a rather simple way.[404] As is further outlined in the box on this promising practice, Estonia uses a similar approach.

398 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 9 (2).

399 Austria, Code of Criminal Procedure *(Strafprozessordnung, StPO),* BGBl. Nr. 631/1975, para. 49;
Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 300 (3e); Regulation of the Minister of Justice on the model instruction of rights and obligations of a suspect in criminal proceedings (*rozporządzenie Ministra Sprawiedliwości z dnia 30 maja 2014 r. w sprawie określenia wzoru pouczenia o uprawnieniach i obowiązkach podejrzanego w postępowaniu karnym*), 30 May 2014.

400 Based on interviews with defence counsels. Apart from the Hungarian Helsinki Committee, four independent defense counsels were consulted. Their experience with the issues raised has generally been identical.

401 Romania, representative from the Prosecutor's Office attached to the Supreme Court.

402 Hungary, defence counsel representatives.

403 Lithuania, Human Rights Monitoring Institute (Žmogaus teisių stebėjimo *institutas*), Letter to the Minister of Justice (*Teisingumo ministrui*), 11 February 2013, pp. 2–3.

404 Finland, The Police (*Poliisi*) (2013), p. 1.

Promising practice

Leaflets providing information to persons suspected or accused of criminal offences

Using non-technical language, the leaflets produced by the Estonian Ministry of Justice give information on what kind of rights and obligations a person has during different stages of criminal proceedings and which institutions may be involved. It also gives an overview of which type of proceeding may follow (depending on the accusation) and on which terms a proceeding can be implemented. In addition, it provides information on the rights a suspect or an accused person has during their arrest, how to get a legal representative or legal aid, for which compelling reasons a suspect can fail to appear in court, etc.

The leaflets are freely available (in Estonian and Russian) in all rooms of the authorities involved in different stages of criminal proceedings and are given to suspects and accused persons in criminal proceedings. They are also available online.

*Source: Estonia, Ministry of Justice (2014), Leaflet "If you are SUSPECTED or ACCUSED in a criminal offence" (*Kui olete kuriteos KAHTLUSTATAV või. SÜÜDISTATAV*).*

In Poland, in accordance with the Code of Criminal Procedure, prior to the first interrogation, authorities should instruct suspects about their rights in writing.[405] According to a representative from the prosecutor's office, in case of doubt as to whether a suspect is able to understand the content of the written instructions (e.g. due to age, physical or mental condition, intellectual disability, lack of education, poor literacy skills or eyesight), authorities should verbally discuss the information with them.[406]

For specific information on the format and accessibility of the written Letter of Rights that should be provided to persons deprived of liberty, see Section 3.3.1. The format in which information is provided has obvious relevance in cases involving suspects or accused persons belonging to vulnerable groups – see Chapter 4.

3.2. Providing information on the accusation

Directive 2012/13/EU requires Member States to "ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed." This obligation arises at the latest before their first official interview with police or another competent authority and covers all subsequent pre-trial stages of the proceedings, unless informing the person about the accusation would prejudice the course of ongoing investigations. The directive also states that detailed information on the accusation – including the nature and legal classification of the criminal offence, as well as the nature of the accused person's participation – has to be provided at the latest on submission of the merits of the accusation to a court.

The right to be provided with information about the accusation has to be distinguished from the right to information about rights addressed in Section 3.1. Access to information about the rights – being a right in itself – provides a mechanism to claim the right to information about the accusation. The right to be informed about the accusation would be theoretical and illusory if suspected and accused persons were not informed that they have and can exercise such right. At the same time, it is not sufficient for criminal justice authorities to inform individuals about their right to receive information on the accusation without then actually providing the necessary information about the criminal act they are suspected or accused of having committed.

In terms of when such information on the accusation is provided in the course of pre-trial stages, EU Member States fall into two main groups: those with laws according to which such information has to be provided whenever a person acquires the status of crime suspect and those which introduce this obligation only when a person has been deprived of their liberty.

In the first group, the timing of providing information on the accusation for the first time in the course of the pre-trial phase depends on when a person is formally recognised as a suspect. In this context, the analysis in Section 3.1.1 is relevant here, as well. Many laws include a very general obligation to provide information on the accusation to all suspects and accused before the initial questioning. These include Austria,[407]

405 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 300(1); Regulation of the Minister of Justice from 11th June 2015 on model Letter of Rights and Duties for persons suspected in criminal proceedings (Official Journal from 2015 pos. 893).

406 Poland, prosecutor.

407 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO*), 1975, paras. 6 (2) and 50 (1)

Belgium,[408] Croatia,[409] Estonia,[410] Finland,[411] France,[412] Greece,[413] Luxembourg,[414] the Netherlands,[415] Slovenia,[416] and the United Kingdom (England & Wales and Northern Ireland).[417] Some national laws have more specific provisions, which require authorities to provide this information in or together with the official decision or notification about suspicion or accusation (unless the person is arrested before this) – such as Bulgaria,[418] the Czech Republic,[419] Hungary,[420] Latvia,[421] Lithuania,[422] Poland,[423] Portugal,[424] Romania,[425] Slovakia,[426] Spain,[427] and Sweden.[428]

Secondly, there are Member States that introduce this obligation only when the person – be they suspect or accused – is deprived of liberty (upon arrest or shortly thereafter), such as Cyprus, [429] Ireland, [430] Italy,[431] and the United Kingdom (Scotland).[432] This also seems to be the case in Malta, where the law explicitly refers to the provision of information on the accusation through the Letter of Rights upon deprivation of liberty.[433]

As for the concrete details about the accusation provided, most laws require authorities to provide to individuals, at the pre-trial phase, information on the act, date and place of commission of the act of which they are suspected. In Croatia, authorities are supposed to give information on the "grounds for the suspicion"[434], while in Portugal they are supposed to provide a "document specifying the particulars of the case".[435] In Slovenia, only a general reference to the events is often provided in practice.[436] The Spanish law states that the "[i]nformation shall be provided with a sufficient degree of detail so as to enable the effective exercise of their right to a defense."[437] The Latvian law provides more concrete guidance: a suspect has the right to receive a copy of the official decision stating that they are deemed a suspect, and this decision shall indicate, among others, the factual circumstances of the criminal offence to be investigated that determine legal classification, the offence's legal classification, and the grounds for assuming that the offence was likely committed by that person.[438] Authorities in EU Member States generally provide more details on accusations upon submission of the merits of the case to courts.

408 Belgium, Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.
409 Croatia, Criminal Procedure Act (*zákon o kaznenom postupku*), Art. 208 (5).
410 Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Art. 34 (3).
411 Finland, Criminal Investigation Act (*esitutkintalaki/ förundersökningslag),* 805/2011, 1 January 2014, Ch. 7, Section 10.
412 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. 61-1.
413 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 101, 104-105 and 412. See also Greece, National Commission for Human Rights (NCHR) (2015), p. 7 (calling for "the obligation of the competent authorities to fully inform the accused person about the accusation [to be] stated explicitly").
414 Luxembourg, Bill 6758 'Strengthening the procedural guarantees in criminal matters', 23 December 2014.
415 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering),* 11 March 1979, Art. 27c.
416 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku*), 1 January 2006, Art. 148 (3).
417 United Kingdom, HM Government (2014) Police and Criminal Evidence Act 1984 (PACE) Code C Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers (2 June 2014), paragraph 3.21 (b); United Kingdom, HM Government (2015) Department of Justice for Northern Ireland: Police and Criminal Evidence (Northern Ireland) Order 1989 Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (1 June 2015), paragraph 3.16 (b).
418 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 219; Sofia City Court judge.
419 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Section 160 (2).
420 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014 (XXX), Art. 43(2) (a) and 179(2), 1998; Hungary, Joint Decree 23/2003 of the Ministry of Justice and the Ministry of Interior, Art. 119 (VI. 24.).
421 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.
422 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 187, para. 1.
423 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 313 (1).
424 Portugal, Decree-Law 78/87, which approves the Code of Criminal Procedure (*Decreto-Lei n.º 78/87 que aprova o Código de Processo Penal*), 17 February 1987, Art. 58.
425 Romania, Code of Criminal Procedure (*Noul Cod de Procedură Penală*), 1 July 2010, Art. 307.
426 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 24 May 2005, Art. 206.
427 Spain, Code of Criminal Procedure, as amended by Organic Act 5/2015 and Organic Law 6/1985, Art. 118, by analogy.
428 Sweden, Code of Judicial Procedure *(Rättegångsbalk (1942:740))*, 1 July 1994, Ch. 23, para. 18.
429 Cyprus, Law on the rights of persons arrested and detained (*Ο περί των δικαιωμάτων προσώπων που συλλαμβάνονται και τελούν υπό κράτηση νόμος*) N. 163(I)/2005 as amended, Art. 3 (1) and 7 (2), 2005.
430 Ireland, Regulation 8 (1) and 9 (1) Statutory Instrument No.119/1987, Criminal Justice Act, 1984 *(Treatment of Persons in Custody in Garda Síochána Station) Regulations, 1987;* see also *Health Service Executive v White* [2009] IEHC 242.
431 Italy, Decree of the President of the Republic No. 447, Approval of the Criminal Procedure Code, (*Decreto del Presidente della Repubblica 22 Settembre 1988, n. 447 Approvazione del Codice di Procedura Penale*), 22 September 1988, Art. 415a.
432 United Kingdom, HM Government (2014) the Right to Information (Suspects and Accused) (Scotland), 2014, Regulations 2014, regulation 3 (2).
433 Malta House of Representatives, Criminal Code, 10 June 1854, Chapter 9 of the Laws of Malta, Art. 534AB (3) and Schedule E.
434 Croatia, The Criminal Procedure Act, Art. 208 (5).
435 Portugal, Decree-Law 78/87, which approves the Code of Criminal Procedure (*Decreto-Lei n.º 78/87 que aprova o Código de Processo Penal*), 17 February 1987, Art. 58 (4).
436 Slovenia, lawyer.
437 Spain, Code of Criminal Procedures (*Código Procedimiento Penal*), reform by Organic Law 5/2015, amending Article 520.2.d, 27 April 2015, Art. 118.1.
438 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.

According to Directive 2012/13/EU, Member States have a continuous obligation to provide information on the accusation, and should promptly inform persons about any changes in the information given. In practice, aside from the initial information provided before questioning, or as the case may be together with the official notification of the accusation, as well as when taking a person into custody, authorities usually only provide updates on details of the accusations at the end of investigations, when cases are brought to court, and during court proceedings. For example, practitioners in Germany reported that, during preliminary proceedings, informing accused persons about changes in the details of accusations is not legally prescribed. After an accused's examination, police and the public prosecution office undertake all investigations. They only inform the accused whether public charges are preferred or proceedings are terminated at the conclusion of investigations.[439] In Ireland, when the Director of Public Prosecutions decides to prosecute, the police charge the suspect and bring the suspect before a District Court judge. From this point on, the suspect is known as 'the accused' or 'the defendant'. Once the Gardaí have charged the accused, the prosecution writes down the evidence against the accused. The document containing the evidence is called the book of evidence. Once the prosecution has gathered all the evidence they need for the trial, the Gardaí gives the book of evidence to the accused. The District Court judge then sets a date for trial and, in most cases, decides which court will hear the case.

There are exceptions to this general rule of providing updates concerning the accusation details only at the end of investigations, once cases are brought to court. In Latvia, for instance, if during an investigation authorities obtain additional evidence or the factual circumstances of the criminal offence change and it becomes necessary to amend the decision on suspicion, the person directing proceedings shall issue a new decision recognising the person as a suspect in the context of changed circumstances and provide a copy thereof to the suspect.[440] In Romania, "a body that ordered the widening of the scope of the criminal investigation or the change of charges is under an obligation to inform the suspect about the new facts that warranted the widening of the scope."[441] In Hungary, when charges change, the investigative authority must inform the suspect before his/her (next) questioning.[442] If no (further) questioning takes place, the person will be informed only at the next stage of the proceedings – indictment. A similar system exists in Lithuania.[443] In Bulgaria, during the pre-trial stage and outside situations involving custody, when details of an accusation change, authorities are to present the charged person with a new decree for bringing charges.[444] This rule applies when a legal provision for a more serious crime has to be applied, the facts of the case have changed significantly, or new crimes or new persons have to be added to the case. A similar system exists in Slovakia.[445]

3.3. Letter of Rights

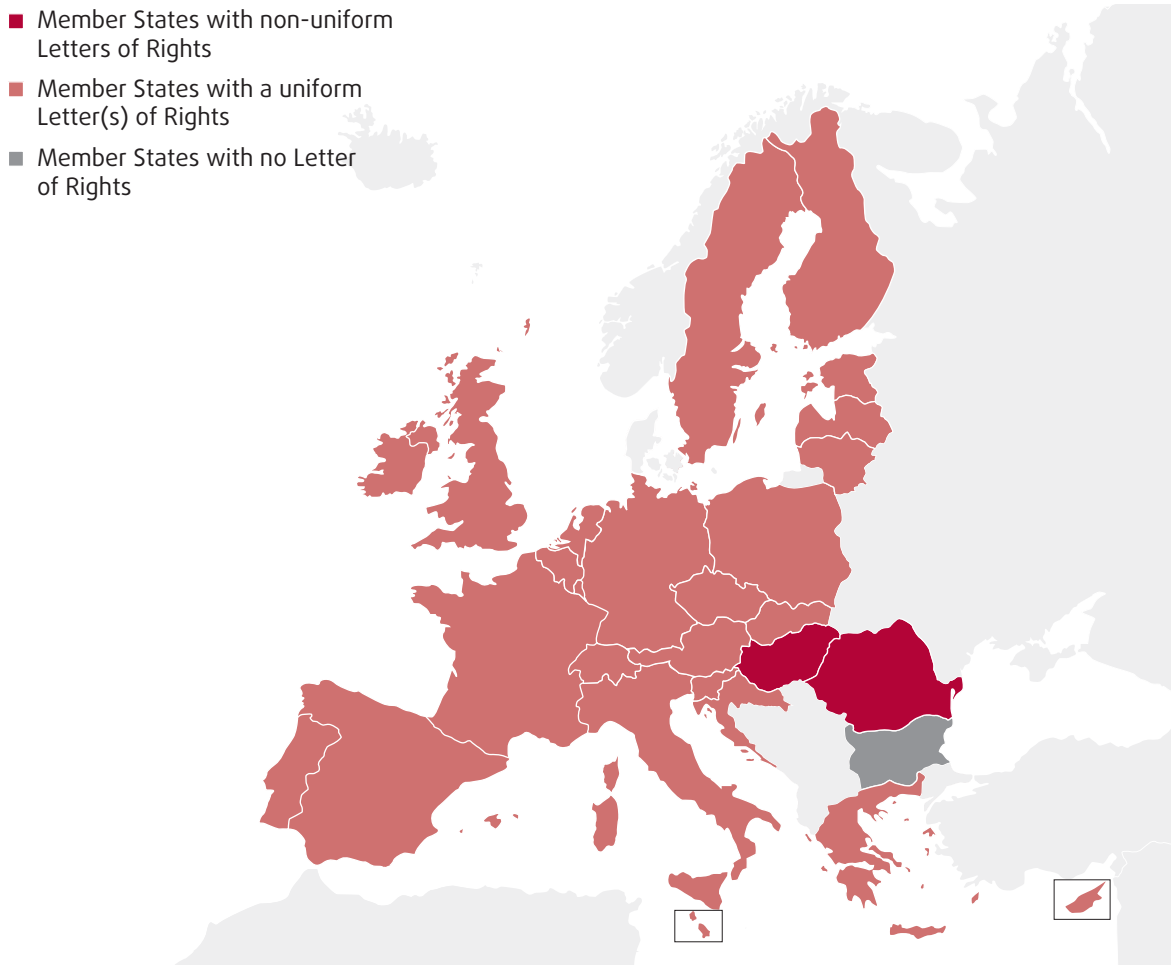
Pursuant to Article 4 of Directive 2012/13/EU, suspects or accused persons who are deprived of their liberty must be promptly informed in writing about additional rights in a so-called Letter of Rights. This is to ensure that detainees are fully aware of their rights while in the vulnerable position of pre-trial detention. To help Member States draw up such a Letter of Rights, the directive provides a model letter in its Annexes 1 and 2.

As Figure 5 indicates, 26 Member States have laws that provide for a Letter of Rights. Of these, 23 have a uniform Letter of Rights that is used in all police stations when someone is arrested.

In Hungary, the authorities' obligation to provide information to detained persons may vary depending on the type of detention applied. Hungarian legislation does not provide a precise definition of the Letter of Rights; it only contains a reference to the obligation to provide information in writing. One of the model letters, called 'Information Leaflet on the rights and obligations of persons detained by the police', is 11 pages long and provides non-individualised information on the rights of detainees in criminal proceedings. Another model letter – 'General Information Leaflet of the Hungarian Prison Service Headquarters'– is used for persons arrested under the European Arrest Warrant and in pre-trial detention. However, this leaflet only states that detained individuals have to "receive information at their admission" on a number of procedural rights applicable in criminal proceedings covered by Directive 2012/13/EU – without actually containing any information on these rights.[446] In practice, each prison uses its

439 Germany, representative from the Criminal Law Committee of the German Bar Association (DAV).
440 Latvia, Criminal Procedure Law.
441 Romania, Code of Criminal Procedure (*Noul Cod de Procedură Penală*), 1 July 2010, Art. 311 (3).
442 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014 (XXX), Art. 43(2) (a) and 179 (2), 1998; Hungary, Joint Decree 23/2003 of the Ministry of Justice and the Ministry of Interior, Art. 119 (VI. 24.).
443 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 187 (2).
444 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 225.
445 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 24 May 2005, Art. 206 (4)–(6).
446 Hungary, Response of the Ministry of the Interior to public data demand request, 23 April 2015, BM/6441-10/2015; Response of the Hungarian National Police Headquarters to public data demand request, 27 April 2015. 290000/17217/2/2015.Ált.

Figure 5: Existence of a uniform Letter(s) of Rights in EU Member States



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive.*
Source: *FRA, 2015*

own Letter of Rights.[447] Romania also does not have a uniform template for the Letter of Rights.[448] Instead, each court and police station can use its own template. Accordingly, these two Member States are not included in the analysis in Section 3.3.1 and Section 3.3.2.

Bulgaria does not have a Letter of Rights as such, and so is also not covered in Section 3.3.1 and Section 3.3.2. The rights are listed in other documents that are provided to persons deprived of their liberty. In case of preventive detention, the accused is informed about his/her rights together with the presentation of the decree for bringing charges against him/her. The rights are listed within the decree and authorities do not provide the accused with a separate letter of rights.[449] Preventive detention is imposed on accused persons as a remand measure in the framework of criminal proceedings. However, the decree for bringing charges is presented to the accused only when enough evidence is gathered about their guilt.[450] In case of police detention, the written detention order and the accompanying declaration signed by the detained person serve the function of a letter of rights. Police detention (arrest) is not considered to be part of criminal proceedings and is imposed on persons regarding whom there is information that they may have committed a crime, or persons sought in relation to extradition or European arrest warrant proceedings.[451] Detainees receive a copy

447 Hungary, Information obtained from staff members of Hungary's Prison Headquarters and the Helsinki Committee.
448 Romania, representatives from the Prosecutor's Office attached to the Supreme Court and from the Ministry of Justice. A model has been developed by the National Magistrates Institute (NMI) (*Institutul Național al Magistraturii*, INM), which reproduces the articles from the relevant criminal legislation. See Romania (2014), p. 319.
449 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 219, para. 3.
450 Bulgaria, Criminal Procedure Code, Art. 219; Sofia City Court judge.
451

of this order upon arrest.[452] The order lists: the right to appeal against the detention before a court; the right to a lawyer; the right to medical aid; the right to make a telephone call to inform someone about their detention; for non-citizens, the right to contact the respective consulate; and the right to be assisted by an interpreter if the person does not understand Bulgarian.[453]

France also has several types of letters of rights, but these are uniformly applied according to the type of procedure in question (police custody, provisional detention, variable system according to the classification of the offence – for example, police custody by derogation as regards organized crime – or the age of the detainee).[454] Similarly, in Germany, there are a number of letters of rights, and which one is used depends on the basis of the arrest (e.g. to establish a person's identity,[455] or on the basis of a committal order or precautionary arrest warrant[456]). This is also the case in Poland.[457] Although Italy has no model Letter of Rights as such, a written notice – which has to be provided to an arrested person according to the law – can be considered as equivalent to a Letter of Rights.[458]

In general, competent authorities should give the Letter of Rights to suspects or accused persons promptly. This is done at the time of arrest or as soon as practically possible in all EU Member States that have a Letter of Rights and are bound by the directive. However, it is difficult to be sure that a Letter of Rights is provided in all cases in practice. For example, in Estonia, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment visited the Police and Border Guard Board South prefecture Valga and Võru house of detention, and noted that it was unclear whether all detained persons had received the declaration of rights or whether their rights were explained to them orally.[459] There may be instances when a certain time period elapses between the detention and the explanation of rights – for example, when several persons are detained at the same time or when there is an urgent need to perform a security check.[460]

452 Bulgaria, Ministry of the Interior Act, Art. 74, para. 6; Sofia City Court judge; National Legal Aid Bureau (*Национално бюро за правна помощ*) (2015), Letter of 30 April 2015 to the Center for the Study of Democracy (*Писмо от 30.04.2015 г. до Центъра за изследване на демокрацията*), 30 April 2015.

453 Bulgaria, Ministry of the Interior Act, Art. 74, para. 2; Bulgaria, National Legal Aid Bureau (2015), Letter of 30 April 2015 to the Center for the Study of Democracy.

454 France, Circular on the presentation of the provisions for criminal proceedings applicable on 2 June 2014 for the law transposing Directive 2012/13/UE of the European Parliament and the Council of 23 May 2012 relating to the right to information within the framework of criminal proceedings (*Circulaire de présentation des dispositions de procédure pénale applicables le 2 juin 2014 de la loi portant transposition de la directive 2012/13/UE du Parlement européen et du Conseil, du 23 mai 2012 relative au droit à l'information dans le cadre des procédures pénales*), NOR: JUSD1412016C, 23 May 2014.

455 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, 163b (1) and 163c.

456 *Ibid*., Sections 126a, 275a (6), 453c in conjunction with 463 (1).

457 The Regulation of the Minister of Justice from 11th June 2015 on model Letter of Rights for persons held under detention on remand in criminal proceedings (Official Journal from 2015 pos. 885); The Regulation of the Minister of Justice from 3rd June 2015 on model Letter of Rights for persons arrested in criminal proceedings (Official Journal from 2015 pos. 835).

458 Italy, Decree of the President of the Republic No. 447 of 22 of September 1988, Approval of the Criminal Procedure Code (*Decreto del Presidente della Repubblica 22 Settembre 1988, n. 447 Approvazione del Codice di Procedura Penale"*), Art. 386 (1).

459 Estonia, (unofficial translation) (*OPCAT kontrollkäik: Politsei- ja Piirivalveameti Lõuna prefektuuri korrakaitsebüroo arestimaja Valga ja Võru kamber*), 3 April 2014, p. 4.2.

460 Estonia, representative from the Police and Border Guard Board.

Promising practices

Drafting a clear and accessible Letter of Rights

The *Inside Police Custody* study, which examined four jurisdictions in Europe, observed that the Notice of Rights and Entitlements given to suspects in England and Wales is "formulated in simple, straightforward language and [...] in an inviting tone."

Source: Blackstock, J., Lloyd-Cape, E., Hodgson, J., Ogorodova, A., Spronken, T. (2013), Inside Police Custody: An empirical account of suspects' rights in four jurisdictions*, Ius Commune Europaeum, Vol. 113, pp. xxxi-575.*

Assessing the Hungarian Letter of Rights

In 2015, the Hungarian Helsinki Committee (*Magyar Helsinki Bizottság, HHC*) launched – with the participation of Rights International Spain, the Lithuanian Human Rights Monitoring Institute, Fair Trial Europe and the Bulgarian Helsinki Committee – a two-year international research project to examine to what extent the requirement to use simple and accessible language in a Letter of Rights is followed in practice. The project aims to identify examples of transferrable good practices, produce alternative letters of rights, and raise awareness about gaps in the correct implementation of Directive 2012/13/EU. These aims are to be achieved through research, a survey of stakeholders and sociolinguistic surveys. The project is supported by the European Commission.

Source: Hungarian Helsinki Committee, Annual Report 2015, para. 3.1.

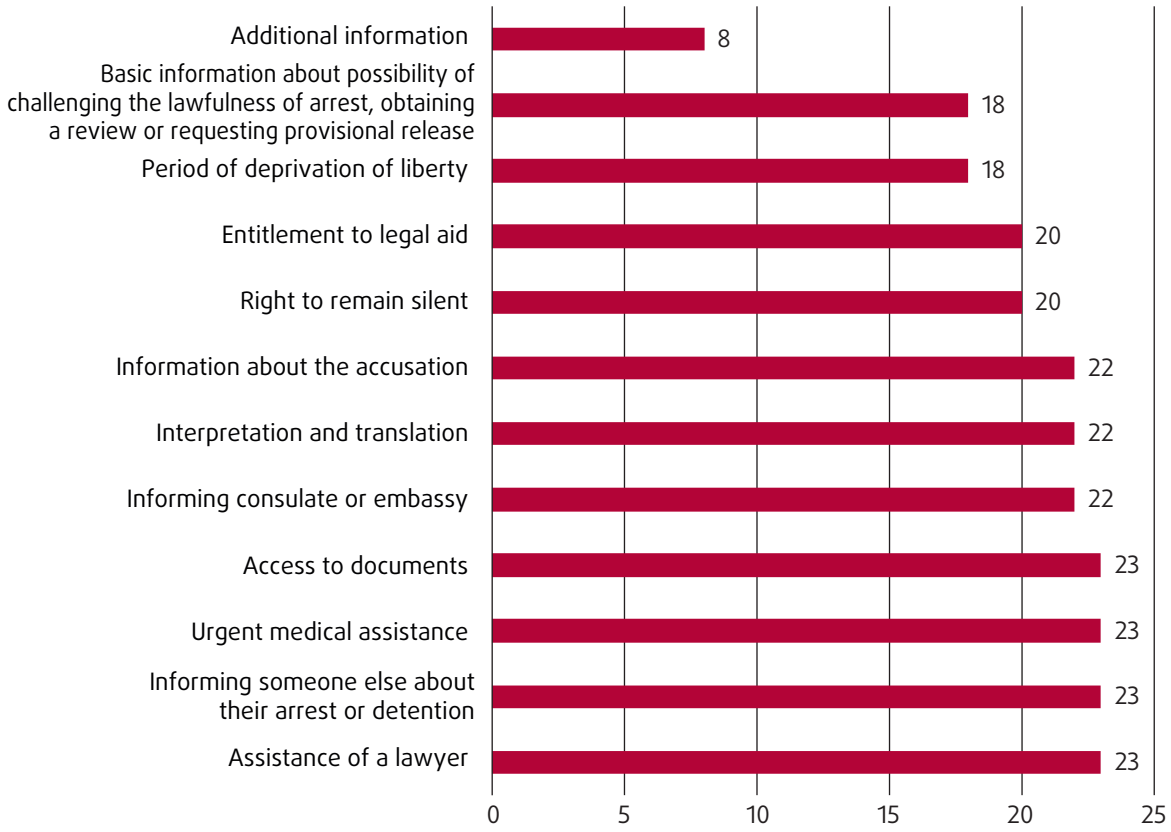
3.3.1. Rights covered in the Letter of Rights

Articles 3 and 4 of the directive clearly outline which rights must be set out in the Letter of Rights. These include the right of access to a lawyer; any entitlement to free legal advice and the conditions for obtaining such advice; the right to be informed of the accusation; the right to interpretation and translation; the right to remain silent; the right of access to the materials of the case; the right to have consular authorities and one person informed; the right of access to urgent medical assistance; and the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority. The Letter of Rights shall also contain information concerning a possibility of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

The letters of rights used in 12 Member States (the Czech Republic,[461] Estonia,[462] France,[463] Germany,[464] Greece,[465] Italy,[466] Lithuania,[467] Latvia,[468] Malta,[469] the Netherlands,[470] Poland[471] and Romania[472]) and in Scotland cover all the rights set out in the directive. The letters of rights used in 10 Member States

461 Czech Republic, Instruction to an arrested person.
462 Estonia, Regulation of the Minister of Justice (*Justiitsministri määrus*), Establishment of form of declaration of rights (Õiguste deklaratsiooni näidisvormi kehtestamine), 14 July 2014.
463 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. 803-6.
464 Germany, Ministry of Justice and Consumer Protection (*Bundesministerium für Justiz und Verbraucherschutz*).
465 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 99A (3).
466 Italy, Decree of the President of the Republic No. 447 of 22 of September 1988, Approval of the Criminal Procedure Code, Art. 386 (1).
467 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 21, para. 4 and Art. 22, para. 3.
468 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005; senior inspector.
469 Malta House of Representatives, Criminal Code, 10 June 1854, Ch. 9 of the Laws of Malta, Schedule E.
470 Netherlands, Ministry of the Interior and Kingdom Relations & Ministry of Security and Justice (2014), *You have been apprehended as a suspect and taken to the (police) station or another place for interrogation. What are your rights?* Version for adults; version for individuals 12–18.
471 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 72, para. 1; Art. 244, para. 2 and 3; Art. 245, para. 1 and 2; Art. 246, para. 1; Art. 248, para. 1 and 2; Art. 261, para. 1 and 3 and Art. 612, para. 2.
472 Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legeanr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010, Art. 83, 209 (17) and 210 (1) and (2).

Figure 6: Rights set out in letters of rights used in EU Member States



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive. Bulgaria does not have a Letter of Rights, and Hungary and Romania have no official template, so these Member States are not included. The category 'Additional information' applies for the United Kingdom without Scotland.*

To identify the content of the Letter of Rights in a specific EU Member State, see Annex 1.

Source: *FRA, 2015*

(Austria,[473] Croatia,[474] Denmark,[475] Hungary,[476] Ireland,[477] Luxembourg,[478] Portugal,[479] Slovakia,[480] Slovenia[481] and Spain[482]) do not include all of these rights. Five Member States (Belgium,[483] Cyprus,[484] Finland,[485] Italy,[486] and Sweden[487]), England &Wales and Northern Ireland, as well as three Member States that do not fully cover all rights listed in the directive – Ireland, Portugal and

473 Austria, Information sheet for detainees (Code of Criminal Procedure), 1 January 2014.
474 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*), 17 December 2014, Art. 108a, para. 1, Art. 239, para. 1.
475 Denmark, The National Commissioner of Police (*Rigspolitichefen*), *Guidelines for persons under arrest*, Form P 570, Engelsk (01/14).
476 Hungary, Journal of the National Police Headquarters (*Az Országos Rendőr-főkapitányság hivatalos lapja), Information Leaflet in Hungarian on the rights and obligations of persons detained by the police and on the rules of detention* (*Magyar nyelvű tájékoztató a rendőrségen fogvatartott személyek jogairól és kötelezettségeiről, valamint a fogva tartás rendjéről*), No. 2015/3, Budapest, 24 February 2015.
477 Ireland, Criminal Justice Act, 1984, Treatment of Persons in Custody in Garda Síochána Stations, Regulations, 1987.
478 Luxembourg, Criminal Procedure Code (*Code d'Instruction Criminelle*, CIC), 15 April 2015, Art. 39 (2) and 52-1.
479 Portugal, Penal Code (*Código Penal Português*), 1982, Art. 61 (1) (a)–(i).
480 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 1 January 2006, Art. 58, para. 1.
481 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art.4 (1), (4) and (5), Art. 8 (3), Art. 148 (3), (4) and a), Art. 157 (3) and (6).
482 Spain, Spanish Constitution (*Constitución Española*), 6 December 1978, Art. 24.2.
483 Belgium, Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.
484 Cyprus, Law on the rights of persons arrested and detained (*Οπερίτων Δικαιωμάτων Προσώπωνπου Συλλαμβάνονταικαι Τελούνυπό Κράτηση Νόμος*) No. 163(I)/2005 as amended, Art. 7(1A) (α).
485 Finland, Criminal Investigation Act (*esitutkintalaki/förundersökningslag*, 805/2011), Ch. 4, Section 17, 1 January 2014; Act on treatment of persons taken into custody by the police (*Laki poliisin säilyttämien henkilöiden kohtelusta/ Lag om behandlingen av personer i förvar hos polisen*, 2006/841), Ch. 2, Section 2 and Ch. 5, Section 1; Detention Act (*tutkintavankeuslaki / lag on rannsakningsfängelse*, 768/2005), Ch. 6, Section 1; Coercive Measures Act, Ch. 3, Section 15).
486 Italy, Decree of the President of the Republic No. 447 of 22 September 1988, Approval of the Criminal Procedure Code, Art. 386 (1).
487 Sweden, Decree on Preliminary Investigations *(Förundersökningskungörelse (1947:948))*, 1 June 2014, para. 12–12a.

Slovenia – include additional rights not included in the directive.

The rights more frequently missing from the Letter of Rights are: the right to be informed of the maximum length of time for which a detainee can be detained, and basic information on challenging the lawfulness of the arrest, obtaining a review of the detention or making a request for provisional release.

Promising practice

Explaining the importance of the rights

A good example of informing arrested persons on their right to consult a lawyer can be seen in the Netherlands, where the brochure used as a Letter of Rights clearly explains the role of the lawyer and emphasises the need to consider carefully whether to consult one.

Source: Netherlands, Ministry of the Interior and Kingdom Relations & Ministry of Security and Justice (2014), You have been apprehended as a suspect and taken to the (police) station or another place for interrogation. What are your rights? *Version for adults; version for individuals 12–18 years old.*

Seventeen Member States ensured that the Letter of Rights includes a clear statement on the maximum number of hours or days suspects or accused persons may be deprived of their liberty. Given that criminal charges against an individual may be modified, this can be complicated – as a result, the Letter of Rights in Greece warns detainees that they could be held for a maximum of 18 months.[488] In Germany, the different letters used contain no clear information about the permissible length of an arrest, though the relevant authority informs detainees that they must be brought before a judge without delay – at the latest on the day after their arrest. A judge will then decide whether the detention can continue. In Belgium, the Letter of Rights clearly states that a detainee can be detained for a maximum of 24 hours, which can be extended by an additional 24 hours.[489] Closely linked with this is the right to be informed about the possibility of challenging the lawfulness of the arrest, obtaining a review of the detention or making a request for provisional release. This right is addressed in the Letter of Rights in 18 Member States. The Letter of Rights in Austria, for instance, provides a detailed explanation of this right, specifying what body must be contacted and the time period within which this should be done.[490]

As for additional rights covered in some Member States' letters of rights, these include, for example, the rights to challenge one's treatment and/or detention conditions in Cyprus,[491] Finland,[492] Ireland,[493] Slovenia,[494] Sweden[495] and the United Kingdom[496] (England and Wales and Northern Ireland). In Slovenia, detainees are advised on their right to eight hours of uninterrupted rest, to meals and to permanent access to drinking water.[497] Cyprus details the detainee's rights to visitations and correspondence.[498] In Finland,[499] detainees receive a general introduction to their rights, and in Slovenia[500] and Ireland,[501] the basic human right to dignity is underlined. For example, in Finland, the Letter of Rights states that "authorities must respect your human dignity and treat you fairly and with due sensitivity. No unnecessary harm or inconvenience may be caused to you. Particular attention must be paid to the treatment of young persons (under the age of 21)."[502]

The Letter of Rights in Belgium also includes additional procedural rights – such as the right to request that all the questions that are asked and the answers given are written down word for word and the right to request an investigating act to be performed, or a hearing to be carried out.[503] In Portugal, detainees are also told of their right to be assisted, to the extent possible, with urgent personal matters such as the care and custody of children or elderly people dependent upon them.[504]

3.3.2. European Arrest Warrant Letter of Rights

Suspects or accused persons detained under a European Arrest Warrant (EAW) have the right to be provided with a Letter of Rights that details the additional rights to which they are entitled – specifically, the

488 Greece, Indicative model letter of rights, Section H (period of deprivation of liberty).
489 Belgium, Explanation of your rights, How long may you be detained for?, Ch. 1, p. 4.
490 Austria, Information sheet for detainees (Code of Criminal Procedure), Legal Protection, 1 January 2014.
491 Cyprus, Letter of Rights for persons arrested under a national arrest warrant.
492 Finland, Letter of Rights, Section 2.2 and 2.11.
493 Ireland, Information for Persons in Custody, C.72(S), Examination by a doctor.
494 Slovenia, Letter of Rights, Letter 2015, part 3.
495 Sweden, Information for suspects and those deprived of liberty, Section 2, para. 5.
496 United Kingdom, Notice of rights and entitlements (NoRE), part A (6).
497 Slovenia, Letter of Rights, Letter 2015, part 3.
498 Cyprus, Letter of Rights for persons arrested and/or detained, Section H and I.
499 Finland, Letter of Rights, Section 1.
500 Slovenia, Letter of Rights, Letter 2015, part 3.
501 Ireland, Information for Persons in Custody, C.72(S), Human Rights.
502 Finland, Letter of Rights, Section 1, para. 2.
503 Belgium, Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.
504 Portugal, Penal Code (*Código Penal Português*), 1982, Art. 61 (1) (a) to (i).

Table 5: Existence of a specific European Arrest Warrant (EAW) Letter of Rights, by EU Member State

	Information about the content of a EAW	Assistance of a lawyer	Interpretation and translation	Possibility to consent	Hearing
AT	No specific EAW Letter of Rights exists.				
BE	No specific EAW Letter of Rights exists.				
BG	No specific EAW Letter of Rights exists.				
CY	✓	✓	✓	✓	✓
CZ	✓	✓	✓	✓	✓
DE	No specific EAW Letter of Rights exists.				
EE	✓	✓	✓	✓	✓
EL	✓	✓	✓	✓	✓
ES	No specific EAW Letter of Rights exists.				
FI	✓	✓	✓	✓	✓
FR	✓	✓	✓	✓	✓
HR	No specific EAW Letter of Rights exists.				
HU	No specific EAW Letter of Rights exists.				
IE	No specific EAW Letter of Rights exists.				
IT	No specific EAW Letter of Rights exists.				
LT	No specific EAW Letter of Rights exists.				
LU	No specific EAW Letter of Rights exists.				
LV	✓	✓	✓	✓	X
MT	✓	✓	✓	✓	✓
NL	✓	✓	✓	✓	✓
PL	✓	✓	✓	✓	✓
PT	No specific EAW Letter of Rights exists.				
RO	No specific EAW Letter of Rights exists.				
SE	✓	✓	✓	✓	✓
SI	No specific EAW Letter of Rights exists.				
SK	No specific EAW Letter of Rights exists.				

Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive.*

Source: *FRA, 2015*

rights granted by the respective law implementing Framework Decision 2002/584/JHA (on the EAW) in the executing Member State. It is therefore important for Member States to ensure that these rights are outlined either in a specific Letter of Rights or within the general letter.[505]

The rights include being informed of the EAW and its contents – as well as of the possibility of consenting to surrender to the issuing judicial authority, and, in the absence of such consent, to have a hearing by the executing judicial authority.[506] The arrested person also has the right to be assisted by legal counsel and by an interpreter.[507] A model Letter of Rights for persons arrested based on an EAW is provided in Annex II of Directive 2012/13/EU.

Eleven Member States have an official Letter of Rights adapted for persons who are arrested under an EAW (see Table 5). Finland and Latvia include these rights within the general Letter of Rights. The nine other Member States (Cyprus, the Czech Republic, Estonia, Greece, France, Poland, Malta, the Netherlands, and Sweden) have a separate, specific letter for EAW cases. In other countries – even where the criminal procedural law specifically refers to the obligation to provide information in writing in EAW cases[508] – there is no official, specific Letter of Rights for EAW proceedings as such, and so a general Letter of Rights provided in ordinary criminal proceedings, as referred to in Section 3.3, is in practice often also used for EAW cases.

The content of the Letter of Rights specifically used for EAW proceedings varies between Member States.

505 Directive 2012/13/EU, Art. 5 (1).
506 Framework Decision 2002/584/JHA, Art. 11(1) and Art. 14.
507 Framework Decision 2002/584/JHA, Art. 11 (2).

508 E.g. Hungary, Act CCXL of 2013 on the execution of punishments, measures, certain coercive measures and administrative confinement, Art. 12, para. 5a.

In Cyprus, it mirrors the model suggested by the directive.[509] Other Member States have expanded upon the rights in Framework Decision 2002/584/JHA to include rights such as the right to silence (France,[510] the Netherlands,[511] and Sweden[512]), the right to inform a third party (France,[513] Poland,[514] the Netherlands,[515] Latvia[516] and Sweden[517]), the right to food or drink (Sweden[518]), and the right to be examined by a doctor (France,[519] the Netherlands,[520] Poland[521] and Sweden[522]).

3.4. Right of access to materials of the case

Directive 2012/13/EU provides suspects and accused persons and/or their legal representatives the right to access the materials of the case. To demonstrate to which extent access to case materials during different stages of proceedings varies across the EU, this section addresses several aspects of these rights. After briefly looking at general findings linked to issues such as costs, the degree of authorities' proactivity in providing access, and how physical access to the materials is practically facilitated, this section focuses on access to materials of the case during the pre-trial and trial stages of proceedings. It also addresses grounds for refusing to provide such access and access to materials that are essential to challenge the lawfulness of one's detention or arrest.

509 Cyprus, Letter of Rights for persons arrested on the basis of a European Arrest Warrant.
510 France, Declaration of legal rights to be provided to a person who is the subject of a European Arrest Warrant, a provisional arrest request or an extradition request, para. 3.
511 Netherlands, Letter of Rights with respect to the European Arrest Warrant, Know your rights, para. 1.
512 Sweden, Information for those who are requested to be surrenders in accordance with a European or Nordic warrant of arrest, Section 1, para 2.
513 France, Declaration of legal rights to be provided to a person who is the subject of a European Arrest Warrant, a provisional arrest request or an extradition request, para. 7.
514 Poland, Letter of Rights of the person arrested on the grounds of the European Arrest Warrant, Section 7.
515 Netherlands, Letter of Rights with respect to the European Arrest Warrant, Know your rights, para. 9 and 10.
516 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005, Section 60.2, Art. 3 para. 2.
517 Sweden, Information for those who are requested to be surrenders in accordance with a European or Nordic warrant of arrest, Section 2, para 1.
518 *Ibid.*, Section 2, para 3.
519 France, Declaration of legal rights to be provided to a person who is the subject of a European Arrest Warrant, a provisional arrest request or an extradition request, para. 8.
520 Netherlands, Letter of Rights with respect to the European Arrest Warrant, Know your rights, para. 11.
521 Poland, Letter of Rights of the person arrested on the grounds of the European Arrest Warrant, Section 14.
522 Sweden, Information for those who are requested to be surrenders in accordance with a European or Nordic warrant of arrest, Section 2, para. 4.

3.4.1. General modalities of access to materials of the case

Pursuant to Directive 2012/13/EU, access to materials of the case should be provided free of charge. According to recital 34, this should not prejudice national law provisions that provide for fees for copying documents from the case file or for sending materials to the persons concerned or their lawyers. At the same time, it is important to ensure that the costs associated with obtaining copies are not so high as to render access to the materials illusory in practice, in contradiction with Directive 2012/13/EU's overall objective to safeguard the proceedings' fairness.

Although access as such is generally provided free of charge, there are usually costs associated with, for example, making photocopies in most EU Member States. In some EU Member States, however – such as France[523] and Hungary[524] – the first copy of case material is actually provided for free. In Romania, a 2015 executive order of the Ministry of Internal Affairs sets a standard price for obtaining copies from case files. Some lawyers have argued that these fees (approximately €0.11 per page) are very high and hinder the right to access the case file.[525] At the same time, under the 2015–2020 Strategy for the Judicial System and at the recommendation of the European Commission,[526] the Ministry of Justice of Romania plans to launch a system allowing all parties in court proceedings online access to case files and all relevant information about a case. As the initiative is only in its infancy and will be tested during a pilot project starting in 2015 – with a view of extending the system to the whole country – it is too early to assess its effectiveness.[527]

523 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. 114.
524 Hungary, Order 12/2014 (VII. 11.) of the National Office for the Judiciary on the regulation of application of documents related to the guidance of juveniles as model forms in criminal, civil and misdemeanour proceedings (*12/2014. (VII. 11.) OBH utasítása a büntető-, polgári és szabálysértési eljárás során használt, kiskorúak tájékoztatásához fűződő iratok nyomtatványként történő rendszeresítéséről szóló szabályzatról*), December 2014.
525 Romania, Ministry of Internal Affairs, (*Ministerul Afacerilor Interne*, MAI), Order no. 64/2015 on organisational measures for exercising the right of access to case files in criminal proceedings (*Ordinul nr. 64/2015 privind stabilirea unor măsuri organizatorice în scopul asigurării exercitării dreptului de a consulta dosarul penal*), 7 July 2015.
526 European Commission (2012), p. 9.
527 Romania, Ministry of Justice, 2015-2020 Strategy for the Judicial System.

Promising practice

Using accessible technology to obtain copies of case files

In Romania, at the request of the Dolj Bar Association, the Craiova Court of Appeal adopted a policy of allowing parties and their legal counsel to make copies of, and scan, documents from case files with mobile phones or professional mobile scanners. Using portable technology instead of having to borrow files from court archives and using copying offices reduces both the time and costs associated with copying.

*Source: Romania, Court of Appeal Craiova (2015), Scanning and copying with a mobile phone or with a professional mobile scanner (*Scanare sau fotocopiere cu telefonul mobil sau cu un scanner professional mobil*).*

Another issue pertains to the forms of evidence that are made accessible. Directive 2012/13/EU requires suspects and accused persons or their lawyers to be able to access all material evidence, and underlines that this should extend beyond documents to photographs and audio or video recordings. FRA's findings show that only some EU Member States' legislation expressly stipulates that material evidence also includes such means of recording. For example, the Criminal Code of Greece defines a 'document' as including photographs, audio, video and summaries.[528] The majority of Member States only refer generally to 'documents' or 'information from the case file'. It is therefore not possible to determine whether all forms of evidence are always available in practice.

The manner in which access to materials is granted in individual EU Member States differs in two further aspects. The first is the degree of proactivity of the competent authorities to share the material evidence. The second concerns different national models of facilitating access to material evidence.

In most EU Member States, the law foresees that access to the material evidence is actively sought by the defence. In some, the competent authority is obliged to share the entire case file with the suspect or accused upon reaching a specific point of the proceedings. In Bulgaria, for example, the investigative body presents it to the defence after conclusion of the criminal investigation.[529] The common law systems impose on the prosecution a statutory duty to continuously disclose evidence. In England, Wales and Northern Ireland, the focus is on disclosure of prosecution material that is advantageous to the defence – the disclosure of material profiting the prosecution is not mandatory.[530] In Ireland, for prosecutions on indictment in more complex cases (as opposed to summary prosecutions of minor offences tried by judges without a jury), the defendant is given a 'book of evidence' that contains – among other documents – a statement of the charges, a list of witnesses for the prosecution and evidence expected to be given by each of them, and copies of documents providing evidence.[531] There is also a well-established right to other materials that assist the defence, damage the prosecution or provide a lead to other evidence, and the police have a duty to seek out and preserve relevant evidence, whether exculpatory or inculpatory.[532]

Rules of criminal procedure in individual EU Member States reflect different approaches to organising access. In some Member States, strict limitations are placed on where and for how long case material can be consulted. For example, in Austria,[533] Croatia or France,[534] access may be only provided within the premises of the competent authority, such as a police or court building. In Luxembourg, access is possible after the first interrogation by the investigating judge, but only in the office of the judge. Pending legislation is expected to grant the accused the right to receive a copy of the file for a reasonable period of time before the hearing.[535] In Croatia, suspects and accused persons are allowed to inspect case files within 30 days from any procedural action. If there is a danger that such an inspection might jeopardise an investigation by preventing or impeding the collection of important evidence, or endanger life, health or property on a large scale, prosecutors can limit this right before the indictment stage. Individuals have a right to appeal such decisions to an investigating judge. However, if suspects are arrested on remand, they must be granted access to files that are relevant for assessing the necessity of their detention.[536]

Access may vary when a suspect or accused is detained. In Hungary, the legislation includes the possibility to request the case file to be brought to a penal institution.[537]

528 Greece, Presidential Decree No. 283/1985, 'Criminal Code' *(Ποινικός Κώδικας),* (OG A' 106/31.5.1985), Art. 13 (c).
529 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 227, para. 8.
530 United Kingdom, HM Government (1996) Criminal Procedure and Investigations Act 1996, Section 3 (1); see also United Kingdom, Attorney General's Office (2013), Attorney General's Guidelines on Disclosure, December 2013, para. 34.
531 Ireland, Criminal Procedure Act 1976, as inserted by Section 9 of the *Criminal Justice Act 1999*, No. 10 of 1999.
532 See in particular *Director of Public Prosecutions v. Special Criminal Court* [1999] 1 IR 60, Carney J., p. 76; see also Ch. 9 of the Director of Public Prosecutions' *Guidelines for Prosecutors*, Ireland, Revised November 2010.
533 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO*), 1975, para. 53.
534 France, Code of Criminal Procedure (*Code de procédure pénale*), 2 March 1959, Art. 63-4-1 and 114.
535 Luxembourg, Bill 6758 Strengthening the procedural guarantees in criminal matters, p. 51.
536 Croatia, Criminal Procedure Act (*zákon o kaznenom postupku*), Art. 184 and 184(a).
537 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 253 (2)–(4).

By contrast, in Lithuania, it would be up to the defence counsel to familiarise him/herself with the file in such cases.[538] In the majority of cases, national legislation foresees the possibility of making physical copies of files and/or excerpts therefrom. According to representatives of the prosecutor's service interviewed during this research, in the United Kingdom (Scotland), evidence is generally sent to defence solicitors electronically.

3.4.2. Access to materials of the case during the pre-trial stage, grounds for refusal and their review

Directive 2012/13/EU emphasises that access to case materials should be granted at the latest upon submission of an accusation to court (for the specific regimes concerning persons arrested and detained, see Section 3.4.3.). This section looks at the scope of access granted in EU Member States in cases where personal liberty is not limited, until the point an accusation is communicated to court. It also examines possible grounds for refusal and the availability of judicial review. For simplicity's sake, this phase – which generally includes the investigative work conducted by the police and the prosecutor or investigating judge/magistrate, as the case may be – is described as the 'pre-trial phase'.

Access

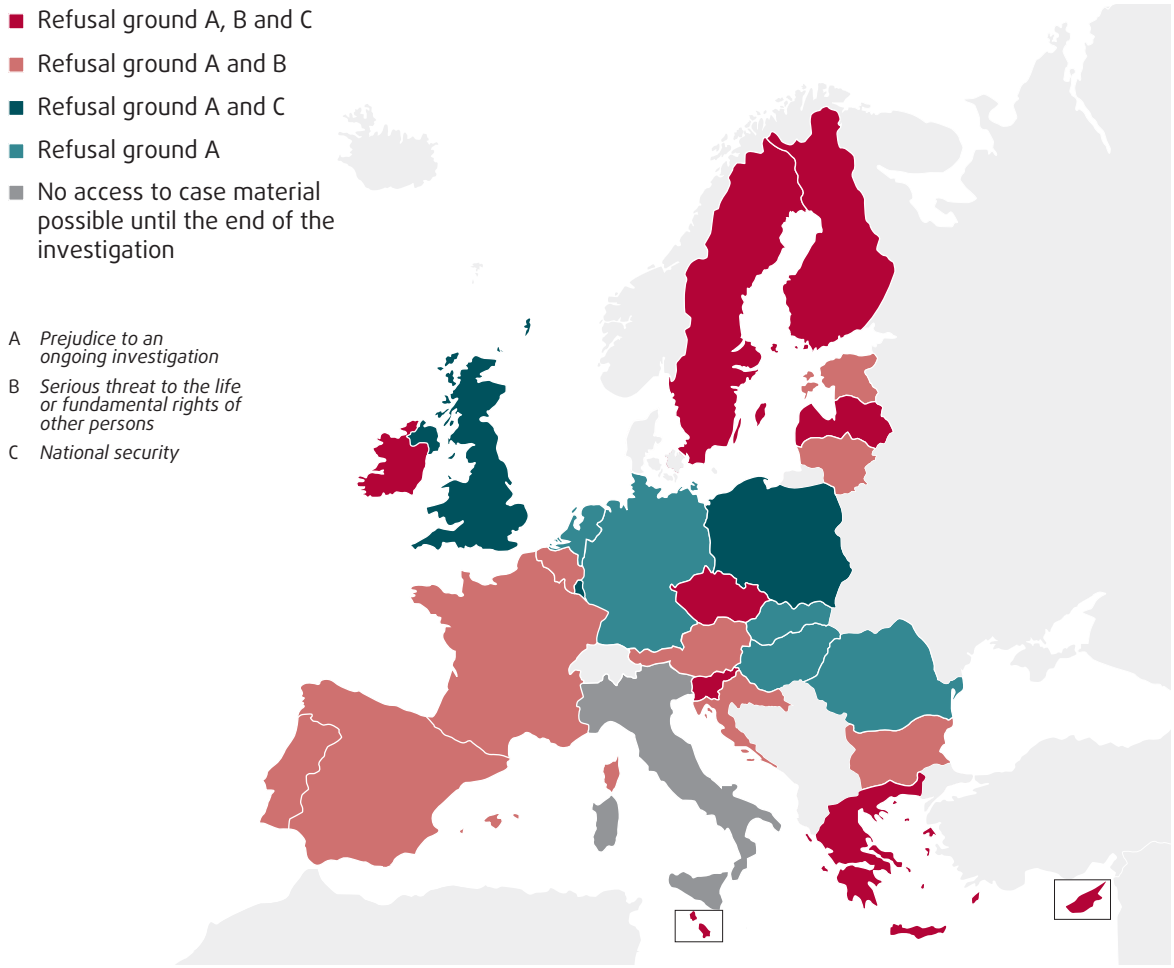
The initial stage of the pre-trial phase is generally conducted by the police, and the rules on providing information emphasise safeguarding the rights of persons facing detention. Access to case materials for those questioned by the police but not deprived of their liberty is not always regulated in national law, and depends on the organisation of the criminal proceedings. In Slovenia, unless a judge orders an investigative act – such as interrogating a witness – to be performed prior to the opening of a judicial investigation, suspects who are not detained generally cannot access case materials during the initial police phase, i.e. until the public prosecutor files the request to open a judicial investigation.[539] In Luxembourg,[540] the law foresees access to elements of the file only after a person has been questioned by the police. A similar situation exists in Belgium.[541] The legislation of other Member States technically (on paper) does not preclude access during this initial phase. In Greece, for example, based on the reform of the Criminal Procedure Code that transposed Directive 2012/13/EU, access to case material should be possible at all stages of the proceedings and, as soon as the specific person can be charged with the offence, this person can request to make copies of the case file.[542] However, several criminal justice and human rights experts, including legal practitioners and NGOs, have reported that the practical degree of access at the point of initial police questioning is generally low.[543]

During further investigations under the auspices of a prosecutor or investigative judge/magistrate, most Member States' laws in principle foresee access to the case file. Italy is a notable exception – the Criminal Procedure Code allows access to case materials only after completion of pre-trial investigations, when a person is accused by the public prosecutor.[544] A similar situation exists in Bulgaria.[545] In some other Member States, only partial access is granted during this phase. Criminal procedural rules in Cyprus, for example, already permit access to "essential materials" – defined as the arrest warrant, the application and the affidavit based on which the court orders were issued[546] – during the investigation stage. However, access to "testimonies and documents" acquired during investigations is available to persons officially accused only once investigations have been concluded. In Latvia, the degree of access is not defined. Instead, it is left up to the discretion of the authority directing the proceedings; this is because access during this stage is seen as an exception from the general rule of investigative secrecy, rather than the norm.[547]

In common law jurisdictions where the concept of a single case file does not apply, access to case materials is primarily based on the prosecution's continuous duty of disclosure. In England, Wales and Northern Ireland, the prosecution is to provide copies of all documents that contain the evidence on which the charges are based, and disclose other prosecution material for and against the suspected or accused persons.[548] In Scotland, the prosecutor is also obliged to disclose all material information for or against the suspect (or the accused).[549] In

538 Lithuania, Criminal Procedure Code (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 237 (1).
539 Gorkič, P. (2012).
540 Luxembourg, deputy prosecutor.
541 Belgium, Code of Criminal Procedure, Art. 21 bis.
542 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 31 (2) and 104–105.
543 Fair Trials Europe, Legal Experts Advisory Panel (2015c), p. 14.
544 Italy, representative from the Association for Legal Studies on Immigration (ASGI).
545 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 227, para. 8.
546 Cyprus, Law on Criminal Procedure (*Ο περί ποινικής δικονομία νόμος*), 1959, Ch. 155, Art. 7 (1).
547 United Kingdom, representative from the Public Prosecution Service of Northern Ireland.
548 United Kingdom, HM Government (1996), Criminal Procedure and Investigations Act 1996 (CIPA), Section 3 (1). See also United Kingdom, HM Government (2013), Attorney General's Office, *Attorney General's Guidance on Disclosure for investigators, prosecutors and defence practitioners* (December 2013), p. 4, para. 1.
549 United Kingdom, HM Government, Criminal Justice and Licensing (Scotland) Act 2010, section 121 and UK, Crown Office and Procurator Fiscal Service (2011), Criminal Justice and Licensing (Scotland) Act 2010, Code of Practice: Disclosure of Evidence in Criminal Proceedings, 6 June 2011, para. 4.1.

Figure 7: Grounds for refusing access to case materials during the pre-trial stage in EU Member States



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive.*
Source: *FRA, 2015*

Ireland, access is granted to charge sheets and custody records (for detained persons), interview statements and interview video records. Additional materials are made available after accusation. In cases involving the more complex proceedings on indictment, these include a comprehensive 'book of evidence', which has to be provided before the start of trial. This requirement does not apply to summary proceedings initiated for minor offences and tried without a jury.[550]

Another interesting aspect of access to case materials is the differentiation between the rights of the suspect/accused and their legal representative in some jurisdictions. In Denmark[551] – which is not bound by Directive 2012/13/EU – lawyers sometimes receive access to case materials but are obliged not to disclose these to their clients. Similar situations can arise in Scotland, where defence solicitors may receive documentary evidence but cannot disclose it to suspects due to public interest considerations.[552]

Grounds for refusal

Article 7 (4) of Directive 2012/13/EU provides a catalogue of reasons that can justify restricting access to case materials. These include a serious threat to the life or fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. The directive requires a certain, albeit undefined, degree of seriousness of these risks. Furthermore, their application is only permissible if it does not prejudice the right to a fair trial.

Figure 7 illustrates which main grounds of refusal are available in individual Member States. It shows that,

550 Ireland, Criminal Procedure Act, 1967, Section 4 B and C.
551 Denmark, Administration of Justice Act (*Af Retsplejeloven*), 6 November 2008, Section 729 a (2)–(4).
552 United Kingdom, HM Government (2010) Criminal Justice and Licensing (Scotland) Act 2010, Section 141.

where access to case materials is possible during the pre-trial stage, almost every Member State foresees the possibility of limiting this access – using the above grounds or variations thereof, or grounds that can be classified under one of the broad categories. As noted above, Italy – where access to case materials is not possible until the closing of the investigations and the notification of the accusation – represents one of the exceptions. A similar situation exists in Bulgaria.[553]

The figure shows that while some Member State legislation allows refusals based on the full range of grounds foreseen by the directive, others apply a more open approach. Some formulations are very similar to that used by the directive, such as those adopted in Greece[554] or Cyprus.[555] There are some less explicit or overlapping formulations, such as general references to 'public interest' that are not further elaborated on. The legal frameworks of Ireland[556] and the United Kingdom,[557] for example, refer to 'public interest privilege' as possible grounds for non-disclosure. Interestingly, although Directive 2012/13/EU refers to 'public interest' as a wider category encompassing national security and the interest of ongoing investigations, legislation of some Member States – such as Poland[558] – lists it as a separate category. The figure nevertheless categorises Member States according to the terms (grounds) used in the directive.

In some Member States, more specific and formal guidance documents on refusal grounds are available for the prosecution. According to practitioners consulted for this research, such guidelines can be both beneficial and detrimental to access. In Lithuania, the Bar Association of Criminal Law Professionals reported that a combination of the Prosecutor General's *Recommendations on Familiarisation of the Participants of the Process with Case Materials in Pre-trial Investigation* – which list grounds for which the prosecutor may refuse file consultation[559] – and the actual law – which allows the prosecutor to decide not to disclose documents when disclosure would negatively affect a pre-trial investigation[560] – has resulted in a high refusal rate.

National legislation most commonly permits restricting access to case materials at the pre-trial stage when this could negatively affect ongoing investigations. Indeed, this is the only ground foreseen for refusing access in some Member States' legislation, including Austria,[561] Germany, Hungary,[562] the Netherlands[563] and Slovakia. In most cases, the law explicitly mentions this factor, though some Member States' legislation uses more general terms. The Criminal Procedure Code of the Czech Republic allows refusal if there are "serious reasons for doing so",[564] but commentaries note that this typically involves cases where results of police investigations would be compromised by granting access – for example, by affecting the objectivity of witnesses.[565] As highlighted by Fair Trials International, such vague formulations can lead to an overuse of the refusal grounds.[566] Some Member States apply, at least formally, more specific or more stringent formulations, arguably more befitting the spirit of Article 7 (4) of the directive. In Slovakia, for example, disclosure can be restricted only if measures cannot be taken to prevent "thwarting or seriously complicating"[567] the purpose of criminal proceedings. In Luxembourg, there must be "serious reasons to believe that access constitutes a real danger of obscuring evidence".[568]

It is worth noting that while some Member States' legislation clearly refers to the investigation of the case at hand, at least in some Member States, these grounds may also relate to other investigations.[569] Information provided by practitioners indicates that this derogation is used with varying intensity in individual Member States. In Poland, legal representatives from the field pointed out that the "need to protect important state interest or proper course of the proceedings"[570] is regularly invoked to refuse access to case materials at the pre-trial phase. In Germany, on the other hand, access is usually granted and the argument that it may "endanger

553 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 227, para. 8.
554 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 101 (3).
555 Cyprus, Law on Criminal Procedure (*Ο περί ποινικής δικονομία νόμος*), 1959, Ch. 155, Art. 7 (4).
556 Ireland, barrister.
557 United Kingdom, HM Government (1996) Criminal Procedure and Investigations Act 1996, Section 3 (6).
558 Poland, Code of Criminal Procedure (*ustawa z dnia 6 czerwca 1997 r.– Kodeks postępowania karnego*), 6 June 1997, Art. 156, para. 5.
559 Lithuania, Prosecutor General, Order of the No. I-58 approving the Recommendations on Familiarisation of the Participants of the Process with Case Materials in Pre-trial Investigation, 18 April 2003.
560 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 181 (1).
561 Austria, Code of Criminal Procedure, para. 51 (2).
562 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*), introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 95, 96 and 213 (4).
563 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering*), 11 March 1979, Art. 187d, para. 1.
564 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Section 65 (2).
565 Šámal, P. *et al* (2013), p. 707.
566 Fair Trials Europe, Legal Experts Advisory Panel (2015c), p. 16.
567 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 1 January 2006, Art. 69 (2).
568 Luxembourg, Criminal Procedure Code (*Code d'Instruction Criminelle, CIC*), Art. 85 (2) as proposed by Bill 6758.
569 See, for example, in relation to Germany, Meyer-Goßner, L. and Schmitt, B. (2014), para. 147 No. 25, or in relation to Denmark, Administration of Justice Act, 6 November 2008, Section 729 c (1).
570 Poland, The Code of Criminal Procedure (*Ustawa z dnia 6 czerwca 1997 r.– Kodeks postępowania karnego*), 6 June 1997, Art. 156.

the purpose of the investigation"[571] is seldom used to deny it, according to the bar association of practitioners – although practice may vary among districts.

The competent authorities in a number of Member States can refuse access on the basis of other important public interests, such as national security. This is the case, for example, in Malta[572] or Slovenia.[573] Some Member States refer to national security; others, such as Luxembourg, refer to "external or internal security".[574] The widest discretion in this regard seems to be provided for in the Administration of Justice Act of Denmark, which is not bound by Directive 2012/13/EU. It allows taking into consideration "the interests of foreign powers",[575] which potentially goes beyond the concept of "national security" of the Member State in which the criminal proceedings are instituted.

The directive provides that refusing access to evidence is permitted if access may lead to "a serious threat to the life or the fundamental rights of another person". About half of the Member States apply variations of this refusal ground. In Croatia, access to case materials can be restricted if it could "endanger life, health or property on a large scale".[576] Some countries place specific limitations on disclosing contact information – such as Finland, which does so where it could compromise the "safety, interest or right of a witness, an injured party, another party to the matter or a person who has reported an offence".[577] In France, an investigating judge can refuse to grant access if it could lead to pressure on witnesses, experts or victims,[578] which can be seen as falling both under protecting their rights and the interests of the proceedings. Furthermore, the identities of witnesses with protected identity and undercover officers are commonly exempted from disclosure. In Austria, when anonymous witnesses are involved, only copies of case materials are handed out, with the witness's personal data concealed.[579]

In several Member States, accessing the case file is subject to additional limitations. In Romania, for example, the public prosecutor can refuse disclosure if it could harm properly conducting the criminal investigation, but only for up to ten days.[580] In Spain, secrecy imposed upon investigative materials can only last for one month and has to end at least ten days before finalisation of the pre-trial investigations.[581] However, the Spanish Constitutional Court has in some cases – prior to adoption of the directive – upheld the legality of extending this period. For example, it has upheld extensions by 20 days and even by 6 months.[582] The court found that extensions do not affect the right to a public hearing, which applies to trials pursuant to Art. 24(2) of the Spanish constitution. However, it found that these could violate the right to defence, guaranteed by Art. 24(1), and therefore examined, on a case-by-case basis, whether secrecy was justified and the defendant's opportunity to challenge the evidence against him/her were affected. If not, the court deemed the extension a mere procedural infringement, without constitutional relevance. The ECtHR upheld this case law.[583]

Review of refusal grounds

Article 7(4) of the directive requires decisions to refuse access to case materials provided for in paragraphs 2 and 3 of Article 7 to be taken by a judicial authority or to at least be subject to judicial review. This is particularly important to ensure effective access to remedies in line with Article 47 of the EU Charter during the pre-trial stage, where the body conducting the proceedings can be a body other than a court, such as the police or public prosecutor.

In some Member States, the police or prosecution cannot refuse access on their own, but can only propose this to a judge. In the Netherlands, if a suspect requests access to documents other than those provided for by law, the prosecutor may only refuse it with authorisation from the examining judge.[584]

More commonly, decisions to refuse access are taken by the prosecution and an appeal to the court is possible. In Ireland, in the event of non-disclosure of information, an application to a judge can be made and will be decided based on the relevance of the document for

571 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, Section 147 (2).
572 Malta, House of Representatives, Criminal Code, 10 June 1854, Ch. 9 of the Laws of Malta, Schedule E Part 1 B.
573 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art. 157 (6).
574 Luxembourg, Criminal Procedure Code (*Code d'Instruction Criminelle, CIC*), Art. 85 (2), as proposed by Bill 6758.
575 Denmark, Administration of Justice Act (*Af Retsplejeloven*), 6 November 2008, Section 729 c (1).
576 Croatia, The Criminal Procedure Act (*Zakon o kaznenom postupku*), Official Gazette (*Narodne novine*) Nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13,145/13, and 152/14, 17 December 2014, Art. 184a, para. 1.
577 Finland, Act on the Openness of Government Activities (*Laki viranomaisten toiminnan julkisuudesta*), 621/1999, 1999, Section 11, Subsection 2 (7).
578 France, Code of Criminal Procedure, Art. 114; but a Circular dated 3 August 2001 provides that such opposition by the investigating judge to the inspection of files is an exceptional case.
579 Austria, Code of Criminal Procedure, para. 51.
580 Romania, Law No. 135/2010 on the Code of Criminal Procedure (*Legeanr. 135/2010 privind Noul Cod de ProceduăPenală)*, 1 July 2010, Art. 94 (4).
581 Spain, Art. 302 CPA.
582 Spain, Constitutional Court, Judgment 176/1988, 4 October; Judgment 174/2001, 26 July.
583 ECtHR, *Vazquez Hernandez v. Spain*, No. 1883/03, 2 November 2010.
584 Netherlands, Code of Criminal Procedure, Art. 34.

the defence.[585] Judicial review is available, for instance, in Cyprus[586] or Malta.[587]

Investigative secrecy in Portugal (intended primarily for more serious cases) can either be imposed by the investigating judge or, in some cases, by the prosecution, with subsequent confirmation by a judge within 72 hours.[588] The defence can also at any time request that the investigation secrecy is lifted, and if the prosecutor refuses, the request is forwarded to the investigating judge.[589] Some experts consider this approach problematic.[590]

Individual Member States do provide for modalities that supplement judicial review. For example, in France, parties can challenge refusals by an investigating judge before the president of the Chamber of Investigation – unlike with regular appeals, this entity has the special power of review in the event of a refusal by the investigating judge. According to national jurisprudence, an investigating judge's failure to meet the formalities prescribed for decisions refusing access – including due to a lack of sufficient justification – is sufficient reason to drop a case.[591]

In some Member States, no judicial review is foreseen during police investigations, and remedies can only be sought via the prosecution system at this stage. Examples include the Czech Republic,[592] Poland,[593] Romania,[594] or Slovakia,[595] where decisions made by the police are reviewed by the prosecutor, and decisions made by the prosecutor are reviewed by a superior prosecutor.

3.4.3. Access to materials of the case essential for challenging the lawfulness of detentions or arrests

Article 7(1) of Directive 2012/13/EU pays specific attention to safeguarding the rights of suspects who are detained or otherwise subject to security measures.

585 Ireland, barrister; Abrahamson, W. *et al* (2013), pp. 22–23.
586 Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα τηςΚυπριακής Δημοκρατίας*), 16 August 1960, Art. 146.
587 Malta, criminal law practitioners.
588 Portugal, Penal Code, Art. 86 (2) and (3).
589 *Ibid.*, Art. 86 (4) and (5).
590 Albuquerque, P. P. (2009), p. 252.
591 France, Court of Cassation, Criminal Chamber (*Cour de cassation, Chambre criminelle*), Decision, 15 March 1973, *Bull. crim.* No.134, *D.* 1973, p. 338.
592 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Section 174/2/d and 188/1/e.
593 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 159.
594 Romania, Code of Criminal Procedure (*Noul Cod de Procedură Penală*), 1 July 2010, Art. 95, 311 (3) and 336.
595 Slovakia, Criminal Procedure Code 301/2005 Coll. (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 1 January 2006, Art. 69 (1) and (2).

Access

The directive does not provide for any grounds that would justify derogations from the defence's right to access materials essential for challenging arrest and detention. In Member States, it is generally possible for persons who are already in detention in the pretrial (investigation) stage of proceedings to access case materials to challenge the lawfulness of their detention. But the degree and conditions of access vary.

Directive 2012/13/EU talks about the need to provide access to materials "essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention". The understanding of 'essential' materials, as well as the overall scope of access, differs in individual jurisdictions. In Belgium, access to the entire criminal file must be granted on the last working day before the hearing that confirms the arrest warrant.[596] In France, the case file is made available to the defence four working days before each questioning. Prior to the first questioning by the prosecutor, however, only certain formal documents – such as the official report of the notification of rights during placement in police custody – can be consulted; the underlying evidence cannot.[597] In Cyprus, only 'essential materials' are to be supplied to the defence, including the arrest warrant, the application and the affidavit based on which the court orders were issued.[598] Other Member States use more flexible formulations. In Spain, a reform of the Code of Criminal Procedure implemented in 2015 ensures the lawyer's right to access immediately those elements of the case materials that "may be essential to challenge the lawfulness of the detention or imprisonment".[599] German legislation foresees the possibility to access "information of relevance for the assessment of the lawfulness of such deprivation of liberty" and the right to access is not subject to the otherwise applicable refusal grounds protecting the interest of the investigation.[600]

The approach adopted in Hungary – where evidence that is referred to in the prosecutor's motion for detention needs to be made available – leaves less room for interpretation as to which case materials are to be made accessible. Partly in response to the ECtHR's ruling in *Hagyó v. Hungary*[601] – which found a violation of

596 Belgium, Act on Provisional Detention (*Loi relative à la detention preventive/Wet betreffende de voorlopige hechtenis*), 20 July 1990, Art. 21 ter.
597 France, Code of Civil Procedure (*Code de procédure civile*), 14 May 2005, Art. 114.
598 Cyprus, Law on Criminal Procedure (*Ο περί ποινικής δικονομία νόμος*), 1959, Ch. 155, Art. 7(1).
599 Spain, Code of Criminal Procedures (*Código Procedimiento Penal*), reform by Organic Law 5/2015, amending Art. 520(2) (d).
600 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, Section 147 (2).
601 ECtHR, *Hagyó v. Hungary*, No. 52624/10, 23 April 2013.

Article 5(4) of the ECHR where access to evidence supporting the applicant's pre-trial detention was denied – Hungary introduced a duty for investigative judges to attach copies of the investigatory documents that substantiate motions for pre-trial detention and send these to suspects and their defence counsel.[602]

Grounds for refusal

As noted, Directive 2012/13/EU does not refer to any permissible grounds for refusing to provide access to materials essential for challenging arrest and detention. However, some Member States' legislation does seem to allow refusals even in such cases, raising concerns regarding its compatibility with the principle of equality of arms.

In Portugal, for example, persons subject to pre-trial detention or other coercive measures get access to all case materials that led to the decisions to impose these. Examining magistrates can limit this access if it can seriously jeopardise an investigation or lead to risks to the life, liberty or physical or psychological integrity of another party or victim.[603] Similarly, in Slovenia, a suspect can access materials relating to detention in order to challenge it if the detention exceeds 6 hours. Even then, however, access can be refused if it could pose a serious threat to the life or rights of another person, affect the course of proceedings or investigations, or for specific reasons of defence or state security.[604]

In Lithuania, access to case materials essential to challenge detention or arrest is subject to the general conditions governing access in the pre-trial phase – this includes prosecutors' right to refuse access if it would in their opinion negatively affect the pre-trial investigation.[605] Prosecutors have a maximum of 7 days to respond to such requests. According to the bar association of criminal law practitioners, this could lead to situations where defence lawyers do not have sufficient time to familiarise themselves with important information before their first opportunity to submit arguments for a suspect's release. A similar situation currently exists in Latvia, where detained persons, including suspects and accused who have been deprived of their liberty as a security measure, have the right to get acquainted with the materials of the case that constitute the basis for such a measure. Access can be denied by the authority directing the proceedings if it would infringe on fundamental rights of other persons or on interests of the society, or interfere with achieving the objective of the criminal proceedings.[606] In 2015, the Ministry of Justice initiated an amendment of the Criminal Procedure Law to ensure that these limitations would no longer apply to persons in detention.[607]

In Finland, after initiation of a criminal investigation, the defence has the right to obtain information on matters that have led to and become apparent in the criminal investigation. However, the criminal investigation authority may restrict this right if providing information would impede clarification of the matter.[608] Moreover, the defence does not have this right if there is a very important public or private interest to be secured and it is therefore essential to withhold the information. When assessing a party's right to receive information or when restricting this right, the investigating body conducts a case-specific comparison of interests (the requirements of a fair trial, the important public and private interests, the interest of solving crime).[609] Representatives of the bar association have expressed concerns that, as a result, the rights set out in Article 7(1) of the directive are not duly fulfilled, and, in practice, not enough information is provided about deprivations of liberty.

In Sweden, all arrested or detained persons have an unconditional right, on their own request, to be made aware of the 'circumstances' that form the basis of the decision to arrest or detain them. The right in itself cannot be limited, neither with respect to the investigation of the crime nor on the grounds of secrecy,[610] and the prosecutor is obliged to state these 'circumstances' when making an application for arrest or detention. This, however, does not necessarily amount to giving the suspect a right to copies of the investigation material; such access is determined in each individual case. According to the Swedish Government, to comply with the requirements of the directive, it suffices to make material available to detainees. However, the lack of detailed knowledge of the documents could in practice

602 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*), introduced by para. 28 of Act LXXII of 2014 (*XXX*), 1998, Art. 211 (1).
603 Portugal, Penal Code (*Código Penal Português*), 1982, Art. 194 (6) b).
604 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art. 157 (6).
605 Lithuania, Criminal Procedure Code (*Baudžiamojo proceso kodeksas*), 14 March 2002, Art. 181 (1).
606 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.
607 Latvia, Initial impact assessment report (annotation) of the Draft "Amendments to the Criminal Procedure Law" (*Likumprojekta "Grozījumi Kriminālprocesa likumā" sākotnējās ietekmes novērtējuma ziņojums (anotācija)*), Nr. 288/Lp 12.
608 Finland, Criminal Investigation Act (*Esitutkintalaki/förundersökningslag*), 805/2011, 1 January 2014, Section 15 (1) and (2).
609 Finland, Goverment Bill 71/2014 (*Hallituksen esitys eduskunnalle laiksi esitutkintalain muuttamisesta ja eräiksi siihen liittyviksi laeiksi/Proposition till riksdagen med förslag till lag om ändring av förundersökningslagen och till vissa lagar som har samband med den*), HE 71/2014.
610 Sweden, Code of Judicial Procedure *(Rättegångsbalk (1942:740))*, 1 July 2014, Ch. 24, para. 9a.

lead to undue restrictions of the right to challenge the legality of detention.[611]

Review of refusal grounds

In Member States that permit refusing access to case materials that are essential for challenging the lawfulness of detention or arrest, the same remedies as those generally available for refusals during the pre-trial stage (described in Section 3.4.2) at least also apply.

Some Member States offer additional safeguards against refusals in these cases. In Germany, depending on the specific circumstances, either review by a court or a disciplinary complaint procedure within the prosecutorial system may be available. In cases of detained or arrested persons, however, an application to the competent court is always possible.[612] In Slovenia, when a decision to refuse access is taken by the police as part of the decision on detention, it can be appealed to the competent district court.[613]

As discussed in Section 3.4.2, some Member States lack specific rules on the review of decisions regarding access to case material in cases of pre-trial detention. This means that the review remains within the prosecutorial system and is not subject to judicial review, raising concerns regarding the equality of arms principle. However, this is not the case in Poland, where the prosecutor's consent no longer seems to be required for the disclosure of evidence referred to in a motion for detention. The need to review prosecutorial decisions should therefore no longer arise in this respect, according to legal commentators.[614]

3.4.4. Access to materials of the case during the trial phase, applicable grounds for refusal and their review

Access to case materials becomes a necessary precondition for an accused to be able to prepare for trial at the latest when an accusation is submitted to court after the investigation is completed. This is clearly reflected in both Directive 2012/13/EU and applicable case law.[615] Compared to the investigative (pre-trial) phase, the legislation and practices of Member States generally impose fewer obstacles to accessing case files. However, procedures and possible grounds for refusal vary.

Access

As partly described in previous sections, the legislation of many Member States foresees full access to case files upon the completion of criminal investigations. This is the case, for example, in Bulgaria,[616] the Czech Republic,[617] Germany,[618] France,[619] Estonia,[620] Hungary,[621] Poland, Romania[622] and Sweden.[623] In Slovakia, to avoid delays in proceedings, the president of the senate can decide on a reasonable deadline for a person and/or their lawyer to consult the file.[624]In some Member States, such as Latvia, the prosecution has an express obligation to issue to the accused copies of case materials to be submitted to court, if these have not been issued beforehand.[625]

Legislation of some Member States does not explicitly mention access to a 'case file', but describes its elements. In Austria, the accused is allowed to look into the results of the investigation and main proceedings, including pieces of evidence, and make copies.[626] In Cyprus, the accused can, in addition to the limited list of documents that could be inspected during the investigation phase, also consult testimonies and documents acquired during the investigation, as well as "new material" acquired by the prosecution that will be used in court.[627]

In Ireland and the United Kingdom, the obligation to disclose case material also continues after investigations are completed.[628] In Ireland, there are different rules for summary prosecutions of minor offences

611 Sweden, Ministry of Justice (*Justitiedepartementet*), 2014, Government Bill, "Suspects' right to transparency when deprived of liberty" (Proposition 2013/14:157 *Misstänktas rätt till insyn vid frihetsberövanden*), p. 23.
612 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, Section 304.
613 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art. 158.
614 Steinborn, S. (2013).
615 For example, see ECtHR, *Beraru v. Romania*, No. 40107/04, 18 March 2014, para. 70.
616 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 227, para. 8.
617 Czech Republic, Criminal Procedure Code (*Trestní řád*), 29 November 1961, Section 166/1.
618 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, § 147.
619 France, law enforcement officers.
620 Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Art. 34.
621 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*), introduced by para. 28 of Act LXXII of 2014 (XXX), Art. 70B (2), 186 (3), 193 and 194; Joint Decree of MI –MJ 23/2003, VI. 24, Art. 136–138.
622 Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legeanr. 135/2010 privind Noul Cod de ProceduăPenală*), 1 July 2010, Art. 329 (2) and 356 (1).
623 Sweden, Code of Judicial Procedure *(Rättegångsbalk (1942:740))*, 1 July 1957, Ch. 23, para. 20 and 1 April 1999, Ch. 23, para. 21.
624 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 1 January 2006, Art. 69 (5).
625 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.
626 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, Section 51.
627 Cyprus, Law on Criminal Procedure (*Ο περί ποινικής δικονομία νόμος*), 1959, Ch. 155, Art. 7 (2).
628 See, in relation to *Health Service Executive v. White* (2009), IEHC 242 in Abrahamson, W. *et al.* (2013), p. 22.

tried by judges without a jury, and the more complex prosecutions upon indictment. In the former, the right to disclosure derives from common law. The court decides whether to order the prosecution to disclose intended witness statements to the defence, taking into consideration the matters outlined by the Supreme Court in the *Gary Doyle* case:[629] the seriousness of the charge; the importance of the statements or documents; the fact that the accused has already been adequately informed of the nature and substance of the accusation; and the likelihood that there is no risk of injustice in failing to furnish the statements of documents in issue to the accused. For cases tried upon indictment, a statutory duty to furnish a comprehensive 'book of evidence' in advance of the trial applies. It contains, among others, a statement of the charges, a list of witnesses that the prosecution intends to summon and a statement of evidence expected to be given by them, as well as copies of any documentary evidence.[630] New evidence is then subject to the common law duty of disclosure.

Where obstacles to direct consultation of the case file exist at this stage, they are mostly of procedural nature. In Portugal, case materials can be freely consulted, but permission from the judge is needed to remove them from the court building, e.g. for the purpose of copying.[631] An interesting situation arises in France in the event of prosecution by direct committal or summons by the Judicial Police, where the lawyers can consult the file in the High Court but direct consultation by the parties is not permitted. According to an application circular of 23 May 2014, this is due to the risk that individuals who are not part of the justice system could destroy or conceal the documents.[632]

Grounds for refusal

In the majority of Member States, the grounds for refusing access to case material applicable during investigations can no longer be invoked in this phase. This is expressly stated, for example, in the legislation of Romania,[633] Slovakia[634] and Sweden.[635]

Exceptions nevertheless exist. In the Netherlands, refusal grounds applicable during the investigation phase also apply after the issuing of a summons paper at court or a punishment order. Case documents can be withheld for the following reasons: disclosure will cause serious inconvenience to witnesses or seriously hinder them in the performance of their office or profession; disclosure will threaten a compelling investigative interest; or disclosure will threaten the interest of state security.[636]

In Cyprus, the same refusal grounds apply during the trial phase as during the previous stage of the proceedings. These allow refusing access to part of the testimonies or documents acquired during the investigation if such access is likely to put the life or fundamental rights of another person at risk; if such refusal is considered absolutely necessary to protect an important public interest; access is likely to interfere with an investigation; or is likely to seriously damage national security. Refusal is only possible if the right to a fair trial is not adversely affected.[637]

In Portugal, investigation secrecy, if imposed, generally ends with the close of the investigative phase. However, it can be extended for up to three months upon concrete justification, and can be further prolonged in cases of terrorism and serious organised crime.[638]

Grounds for refusal linked to specific issues, such as the protection of witnesses and of classified information, generally continue to apply, and are usually directly imposed by judges. During the course of judicial proceedings in Slovenia, a court can decide to refuse to reveal the identity of protected witnesses[639] and classified information under the Secret Data Act.[640] The investigating judge can further refuse access to evidence previously excluded from the court file as inadmissible.[641] In Ireland, the prosecution is not required to disclose confidential statements by police informants where these statements would identify the informants, or the identity of persons who have assisted the police without intending to be witnesses.[642] Similarly, in Hungary, an exception applies to statements of witnesses under special protection and to classified information; while case materials containing classified information can be accessed in some cases, this can only be done

629 Ireland, Supreme Court, *Director of Public Prosecutions v. Gary Doyle* [1994] 2 IR 286.
630 Ireland, Criminal Procedure Act 1976, as inserted by Section 9 of the *Criminal Justice Act 1999*, No. 10 of 1999.
631 No source available.
632 France, Code of Civil Procedure (*Code de procédure civile*), 14 May 2005, Art. 388-4.
633 Romania, Code of Criminal Procedure (*Noul Cod de Procedură Penală*), 2010, Art. 356 (1).
634 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 1 January 2006, Art. 234 (3).
635 Sweden, Code of Judicial Procedure *(Rättegångsbalk (1942:740))*, 1 July 1957, Ch. 23, para. 20, and 1 April 1999, Ch. 23, para. 21.
636 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering*), 19 March 2015, Art. 187 d.
637 Cyprus, Law on Criminal Procedure (*Ο περί ποινικής δικονομία νόμος*), 1959, Ch. 155, Art. 7(4).
638 Portugal, Penal Code (*Código Penal Português*), 1982, Art. 276 ex vi Art. 89 (6).
639 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art. 240a(1).
640 *Ibid.*, Art. 235a (5).
641 Slovenia, Criminal Procedure Act, Art. 83 (4).
642 Ireland (2001), *Guidelines for prosecuters. Director of public prosecutions*, revised version from November 2010, Section 9.23.

in the official premises of the court or prosecution.[643] In Austria, if a case file contains secrecy interests meriting the protection of others and copies with personal data of anonymous witnesses removed can be handed out.[644] In Germany, the court can take special measures if specific documents are subject to secrecy obligations, such as when the information is classified.[645] In such situations, access can be refused or defence counsel can be obliged to maintain confidentiality.

Review of refusal grounds

Where the possibility of refusing access to case materials during the trial phase exists, judicial review is essential – and is available in all Member States.

When a decision on refusal is not made directly by a court – for example, in the period between the communication of the accusation to the court and the actual hearing – another form of direct judicial involvement is ensured. In the Netherlands, for example, it is up to the prosecutor to exclude certain documents or parts thereof from files made accessible to the accused. However, when considered necessary for reasons mentioned in the previous subsection, the prosecutor requires a written authorisation from the examining judge for this purpose.[646] Similarly, extensions of the 'secrecy' regime in Portugal referred to in the previous subsection – which allows restricting access to case materials also during the trial phase – are granted by examining magistrates at the request of prosecutors.[647]

Judicial remedies are generally also available where courts themselves make decisions during trial. In Germany, court decisions refusing access to case material can be addressed via a complaint to a higher court.[648] In Estonia, they can be brought up in appellate proceedings.[649] Similarly, in Cyprus, trial court decisions refusing access to parts of testimonies or documents can be appealed to a higher court.[650]

Decisions refusing access to personal data or classified information are subject to review and may be overturned by courts in some jurisdictions. For example, this is the case in Finland[651] when courts decide to limit access to contact information of witnesses and plaintiffs, and in Slovenia[652] when courts decide to withhold the identity of protected witnesses or classified information.

3.5. Access to remedies

3.5.1. Challenging failures or refusals to provide information

According to Directive 2012/13/EU, suspects or accused persons (or their lawyers) should have the right to challenge, in accordance with national law, failures or refusals of the competent authorities to provide information or to disclose certain materials of the case in accordance with the directive. Failures to provide relevant information can include situations where notification took place, but was ineffective due to the form or language used or due to other aspects, such as its timing or content.

Directive 2012/13/EU does not oblige Member States to provide a specific appeals procedure, separate mechanism, or complaint procedure for challenging such failures or refusals. The directive leaves it up to Member States to decide how to accommodate this right within their existing systems for remedies. Although it provides no further details on the type of authority to hear these complaints, Article 47 of the EU Charter requires that such complaints are subject to effective judicial oversight.

Research findings show that, in most EU Member States, it is possible to challenge failures or refusals to provide information in the same way as one would challenge any other procedural deficit in the course of criminal proceedings as a result of authorities' action or inaction. The consequences of successful challenges of failures or refusals to provide information or disclose certain case materials differ depending on the given national regime and the stage of proceedings. It may include procedural sanctions, such as the prosecutor returning the case back to the police; declaring invalid the relevant procedural act, such as questioning (nullity of acts); excluding any evidence arising from the relevant procedural act to ensure the fairness of the overall proceedings; dismissal of the case; or it may constitute a ground to start appellate proceedings. (For information on refusals to provide access to a case file, see Section 3.4.4). For example, the Dutch Supreme Court

643 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*), introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 70/C (3)–(5).
644 Austria, Code of Criminal Procedure (*Strafprozessordnung, StPO*), 1975, § 51.
645 Germany, Code of Criminal Procedure (*Strafprozessordnung*), 7 April 1987, Section 96; Germany, Federal Ministry of the Interior concerning the physical and organisational protection of classified information (*Allgemeine Verwaltungsvorschrift des Bundesministeriums des Innern zum materiellen und organisatorischen Schutz von Verschlusssachen, (VS-Anweisung – VSA)*), 31 March 2006.
646 Netherlands, Code of Criminal Procedure, Art. 33.
647 Portugal, Penal Code (*Código Penal Português*), 1982, Art. 276 ex vi Article 89 (6).
648 Germany, Code of Criminal Procedure, Section 304.
649 Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), 12 February 2003, Art. 228.
650 Cyprus, Courts of Justice Law of 1960 until (No. 3) of 1998 (*Οι περίΔικαστηρίων Νόμοιτου 1960 έως (Αρ.3) του 1998)*, 1998, Art. 25.
651 Finland, Goverment Bill 71/2014.
652 Slovenia, Criminal Procedure Act (*Zakon o kazenskem postopku, ZKP*), 13 October 1994, Art. 240a (1) and 235a (5).

decided in 2013 that a statement made by a suspect during his interrogation could not be used as evidence because the authorities had failed to inform the suspect about his rights, unless the suspect's interests had not been harmed by this non-compliance.[653] The suspect in the case had not been notified of his right to remain silent before the interrogation started.

3.5.2. Recording the provision of information

Article 8 of Directive 2012/13/EU provides for the right to challenge failures to provide information. It also obliges Member States to record, in line with their existing domestic procedures, the providing of information in accordance with its provisions. This obligation is a safeguard for ensuring the practical effectiveness of all rights established by the directive. Such recordings are particularly essential as evidence during procedures to challenge failures or refusals of the competent authorities to provide information or to disclose certain case materials. When a suspect or accused person raises the ineffectiveness of the provision of information, national authorities can rely on such records to respond.

Promising practice

Guiding police during the interviewing stage to ensure they provide information on the accusation

In Belgium, guidelines for police officers conducting interviews and writing minutes indicate that officers should, amongst others, provide brief information about the accusation directly after establishing the identity of the person(s) questioned. Templates have been established based on these guidelines. These prompt police officers to specify, in the hearing minutes, that the person questioned was informed about the facts underlying the accusation.

These safeguards help avoid challenges based on the failure to provide such information and ensure that the police practice of providing information on the accusation is harmonized throughout the country.

*Source: Belgium, Circular 8/2011 on the organisation of the assistance of a legal counsel from the first questioning in criminal proceedings (*Circulaire 8/2011 relative à l'organisation de l'assistance d'un avocet dès la première audition dans le cadre de la procedure pénale belge/Richtlijn 8/2011 inzake de organisatie van de bijstand door een advocaat vanaf het eerste verhoor binnen het kader van het Belgisch strafprocesrecht*), 13 June 2013.*

Member States' approaches to how to actively document the provision of information in accordance with the directive vary considerably. The extent of any obligation to keep a record differs not only among jurisdictions, but also within the same country at different pre-trial stages – i.e. police questioning, the investigative stage in general, when being deprived of liberty (Letter of Rights), or when submitting a formal accusation of the court at the end of the pre-trial phase. Authorities in some countries are required to keep a specific protocol about the provision of information, but this obligation may not necessarily extend to all stages of the pre-trial phase. In the United Kingdom (England and Wales and Scotland), for instance, a separate custody record must be opened for arrested persons – yet this does not include people not deprived of liberty. There is no requirement to keep a record about the information given to persons who attend a police station voluntarily.[654]

Countries in which an obligation to keep a record exists can be further divided into two groups: countries that do not require the suspected/accused person's signature to confirm the provision of information, and those that do. In Luxembourg, for instance, during the police questioning and investigative stage, the law provides for record-keeping about information on procedural rights, noting that the written records shall include the date and time at which the person was informed of the rights, but not mentioning their signature.[655] In the Netherlands, the relevant law states that the interrogation records are to contain a notification about the fact that a suspect has been informed about his/her rights (including procedural rights), but their signature is not required.[656] In Sweden, all steps taken by national authorities during pre-trial criminal investigations are registered in the Swedish police's computerised investigation routine (DUR – *datoriserad utredningsrutin*), but the signature of the suspected/accused person is not required. The system takes account of all steps in a criminal investigation, including when the Letter of Rights is provided.[657] Slovakia[658] and Hungary[659] impose similar obligations on

653 Netherlands, Supreme Court (*Hoge Raad*) (2013), Case No. 11/04486, ECLI:NL:HR:2013:BY5706, 16 April 2013.

654 United Kingdom, HM Government (2014) Police and Criminal Evidence Act 1984 (PACE) Code C Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers (2 June 2014), paragraph 2.1; United Kingdom, HM Government (2014) Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014, SSI 2014/159, regulation 3(3).

655 Luxembourg, Criminal Procedure Code (*Code d'Instruction Criminelle*, CIC), coordinated text of 15 April 2015, Art. 81 (10).

656 Netherlands, Code of Criminal Procedure, Art. 27c.

657 Sweden, desk officer at the Swedish Police's section for EU coordination.

658 Slovakia, Criminal Procedure Code (*Zákon č. 301/2005 Z. z. Trestný poriadok*), 1 January 2006, Art. 58, 206, 234 and 235.

659 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*) introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 166(1), (3) and Art. 167.

relevant authorities to take minutes of all investigatory actions during the pre-trial phase.

Other countries encourage or even formally require obtaining a person's signature. In Lithuania, there is a model form for recording explanations of defence and other rights, which envisages obtaining the suspect's signature, the interpreter's signature (where one participates), as well as indicating the language in which the explanation was provided.[660] The Code of Criminal Procedure in Greece similarly requires a relevant authority to draft a report on the explanation provided to the person concerned about their rights, the person's response and their signature.[661] In some Member States within this second group of countries, requesting the person concerned to confirm with their signature that they have been provided with information on their rights is reportedly a common practice rather than an obligation explicitly required by law – such as in Belgium[662] or Germany.[663] In Finland, although the law does not explicitly require signatures, a police recommendation encourages obtaining signatures.[664] In the United Kingdom (Northern Ireland), although not required to maintain records for those who attend voluntarily, the police keep records in a so-called 'voluntary attendance book', which contains similar information to a custody record and is signed by both voluntary attenders and the custody officers.[665]

In general, when the relevant information is provided as a part of a written document, a copy of which is handed over to the person concerned, this is considered an official record. In some cases, the person's signature is required upon the receipt of such a written document. This is the case in Bulgaria,[666] Luxembourg,[667] Latvia,[668] and Portugal[669] with respect to the decree in which charges are formally brought against an accused person. Some countries, such as France,[670] require recipients to sign letters summonsing them for their first appearance, which are delivered by registered mail and include an acknowledgement of delivery. The situation seems to be even more straightforward when it comes to the Letter of Rights, which the directive requires providing in written form (see Section 3.3). For example, in Greece, persons arrested and detained are provided with an information bulletin listing their rights. A special receipt form annexed to this bulletin is to be filled in and signed by both the police officer and the arrested person. The person attests the following: "I received the information bulletin for detainees and my rights were explained to me". The arrested person signs the receipt and writes down his/her name and citizenship. The receipt indicates both the date and hour of signature.[671] In Poland, suspects acknowledge receipt of the Letter of rights and obligations of a suspect in criminal proceedings with their signature, and one of the copies is attached to the case file.[672] In the United Kingdom (England and Wales), the custody officer is responsible for recording the fact that a suspect has received the Notice of Rights and Entitlements, and the suspect shall be asked to sign the custody record to acknowledge receipt of the notice. Any refusal to sign must be recorded on the custody record.[673] Some countries do not require signatures to confirm receipt of the Letter of Rights; these include Germany (although such signature is often requested in practice),[674] Luxembourg,[675] the Netherlands,[676] and Slovenia.[677] In practice, concerns have been raised in at least one country about the ways in which signatures are obtained from persons deprived of their liberty.[678]

As soon as a case reaches the court stage, information is provided directly by a judge, recorded in the minutes of the court proceedings, and made part of the case file. For more information on this context, see Section 3.4.4 on access to case materials.

660 Lithuania, Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), Art. 21 (4), approved by Order of the Prosecutor General No. I-288 of 29 December 2014.
661 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 103.
662 Belgium, police commissioner of the Brussels Judicial Police.
663 Germany, representative from the Criminal Law Committee of the German Bar Association (DAV).
664 Finland, senior adviser, National Police Board.
665 United Kingdom, representative from the Police Service of Northern Ireland.
666 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 219, para. 4.
667 Luxembourg, Criminal Procedure Code, Art. 184, 381 and 387, as proposed by Bill 6758.
668 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.
669 Portugal, Decree-Law 78/87, which approves the Code of Criminal Procedure (*Decreto-Lei n.º 78/87 que aprova o Código de Processo Penal*), 17 February 1987, last amended by Law 27/2015, of the 14 of April 2015, Article 58(4). See also European justice (e-justice), Portugal, "My rights during the investigation of a crime and before the trial".
670 France, Code of Civil Procedure (*Code de procédure civile*), 14 May 2005, Art. 80 (2).
671 FRA research, 2015.
672 Poland, Code of Criminal Procedure (*Kodeks postępowania karnego*), 6 June 1997, Art. 159 and 300(1).
673 United Kingdom, HM Government (2014) Police and Criminal Evidence Act 1984 (PACE) Code C Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers (2 June 2014), para. 3.2A.
674 Germany, representative from the Criminal Law Committee of the German Bar Association (DAV).
675 Luxembourg, Criminal Procedure Code (*Code d'Instruction Criminelle, CIC*), Art. 39 (16) and 52-1 (14) as proposed by Bill 6758.
676 Netherlands, Code of Criminal Procedure (*Wetboek van Strafvordering),* 11 March 1979, Art. 27c.
677 Slovenia, Rules on Police Powers (*Pravilnik o policijskih pooblastilih*), 3 March 2014.
678 Issues raised by the Portuguese Bar Association.

Conclusions and FRA Opinions

Directive 2012/13/EU aims to provide minimum standards on the right to information in criminal proceedings. It applies from the time the competent authorities of a Member State makes someone aware that they are suspected or accused of having committed a criminal offence, until the conclusion of the proceedings. On the basis of its findings, FRA has formulated opinions to offer concrete guidance on ways in which EU Member States can safeguard the effective protection of the procedural rights of suspected and accused persons in line with the directive.

Giving suspects and accused clear information about their rights

FRA's findings show that, in EU Member States, information about rights is frequently provided by using language from the relevant national criminal law provisions. This is often overly legalistic, undermining the actual effectiveness of providing information. This applies to both information about rights provided to suspected or accused individuals who are not deprived of their liberty, as well as to arrested or detained individuals who have the right to receive such information via a written Letter of Rights pursuant to Directive 2012/13/EU.

FRA Opinion 7

When implementing Articles 3, 4 and 5 of Directive 2012/13/EU, which concern the obligation to inform suspected and accused persons about their rights in an accessible manner, EU Member States should consider ensuring that such information is delivered in non-technical and accessible language. This also applies to the written Letter of Rights, which should not simply cite language extracted from criminal law provisions. To render the delivery of information about rights more effective – with a view to properly safeguarding a fair trial – the information provided should be accompanied by explanations adapting the information to the actual circumstances. The information provided should also include details on how the rights can actually be exercised in the course of proceedings.

Facilitating access to the materials of the case

FRA's findings show that EU Member States have different approaches in terms of the extent to which they enable access to materials of the case during the various stages of proceedings, including how they use available grounds for refusing access. This is particularly the case during the early pre-trial phase, such as police questioning. In most Member States, individuals may incur some indirect costs when accessing case materials – for example, photocopying costs.

FRA Opinion 8

Article 7 of Directive 2012/13/EU provides the right to access materials of the case, but recognises that this right is not absolute and has to be weighed against other interests that require protection. In their efforts to safeguard the fairness of the proceedings in line with this provision, EU Member States should consider introducing practical arrangements to facilitate access to case materials – for example, by requiring criminal justice authorities to proactively share such materials with defendants or their lawyers in the course of proceedings. Rules that unnecessarily hamper the effectiveness of the right of access should be avoided, such as rules limiting where persons or their lawyers can consult information, what type of information they can consult, or for how long. EU Member States should also consider exploring the possibility of allowing individuals or their lawyers to obtain copies with the use of digital technology, including mobile devices, to avoid or minimise any indirect costs of accessing case materials.

4 Vulnerable suspected and accused persons

Both Directive 2010/64/EU and Directive 2012/13 EU refer in a general manner to the protection needs of the most vulnerable individuals suspected or accused of crime in the context of their right to interpretation and translation and the right to information.

Recital 27 of Directive 2010/64/EU refers to the "duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of any physical impairments which affect their ability to communicate effectively." It notes that authorities should take appropriate steps to ensure that the rights provided in the directive are guaranteed. In addition, Article 2(3) provides that the right to interpretation includes "appropriate assistance" for persons with hearing or speech impediments.

Directive 2012/13/EU mentions vulnerable individuals in Recital 26: "[w]hen providing suspects or accused persons with information [...] competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition." Article 3(2) obliges Member States to ensure that information about rights is given to suspects or accused persons orally or in writing, in simple and accessible language, "taking into account any particular needs of vulnerable suspects or vulnerable accused persons".

In line with these principles, Member States need to ensure that vulnerable individuals suspected or accused of crime can fully benefit from the right to interpretation and translation and from the right to information in criminal proceedings in EU Member States.

The two directives have to be seen in the context of the Commission's non-binding *Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings*.[679] Vulnerable persons are defined as persons who are not able to understand and effectively participate in criminal proceedings due to their age, mental or physical condition, or disabilities. The recommendation sets out guidance for EU Member States on the need for prompt identification of vulnerable suspects; the presumption of vulnerability in certain cases; the rights to information, legal assistance and medical assistance; audio-visual recording of questioning; and the need to take certain steps in relation to depriving vulnerable persons of liberty.

Field perspectives: the LIT questionnaire

Only one of the national associations of legal interpreters and translators – from Austria – stated that legal interpreters or translators receive notification about individuals' vulnerabilities before meeting them. None of the associations had any specific training in place for legal interpreters or translators on working with vulnerable groups (children or individuals with physical, intellectual or mental disabilities).

"Legal interpreters/translators working with vulnerable groups have no specific training or qualification, they must face the situation just using common sense if any."

Flavia Caciagli, President, Italian Legal Interpreters' and Translators' Association

Source: FRA, 2015

679 European Commission (2013), *Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings*, OJ C 378, Brussels, 24 December 2013.

Promising practice

Developing training tools for sign language interpreters working in criminal justice

JUSTISIGNS, an EU-funded project, focuses on identifying competencies for sign language interpreting in legal settings and providing training for both qualified and qualifying sign language interpreters in this domain. In JUSTISIGNS, 'legal settings' is referred to in a generic context referring to the court room, interactions with solicitors, barristers and lawyers, and also to interactions of deaf people with national police services. The project is coordinated by entities based in Ireland.

The following training materials will be developed for vocational educational training and continuous professional development:

1. A 5-credit course for sign language interpreters, deaf people and front-line legal professionals in 5 countries and the USA
2. A European guide for sign language interpreters practicing in legal settings
3. A European guide for legal professionals working with deaf communities and sign-language interpreters to improve their communication skills
4. An information resource for deaf people in their national sign language to better understand the legal framework in each country
5. Outreach seminars and awareness sessions for the deaf community and legal profession
6. Master classes for sign-language interpreters
7. Project information leaflets
8. Training posters with practical legal/sign language/deaf culture & communication tips
9. Case studies of good practice and documentary evidence outlining the experiences of deaf users in legal contexts.

Source: JUSTISIGNS, VET in Interpreting and Justice, website.

4.1. Persons with physical disabilities

This section provides a comparative analysis of national laws across the EU on the right to interpretation and translation and the right to information of persons with physical disabilities who are suspected or accused of crime. It looks at whether EU Member States' laws contain specific provisions to ensure interpretation and translation and to make crucial information accessible. The EU Member States' obligations under the directives also have to been seen in a wider context of relevant international standards, in particular the CRPD standards referred to in Chapter 1.

Depending on their type of disability, persons with physical disabilities should be provided with services that suit their particular needs – for example, sign language interpretation, real-time captioning, audio files or braille conversion. FRA's findings show that Member States with specific legal provisions on persons with physical disabilities' right to interpretation and translation and their right to information primarily have these in relation to persons with the following disabilities: speech, hearing and visual. The following analysis therefore focuses on these.

Promising practice

Guidelines on interrogating individuals with hearing problems

The US-based National Association of the Deaf (NAD) provides guidelines regarding interrogations of persons with hearing disabilities. These advise state and local police and law enforcement agencies to take action to ensure effective communication with individuals who are deaf or hard of hearing. Specifically, they are advised to provide necessary accommodations – such as qualified interpreters, real-time captioning, or assistive listening devices.

Source: National Association of the Deaf, Police and Law Enforcement, website.

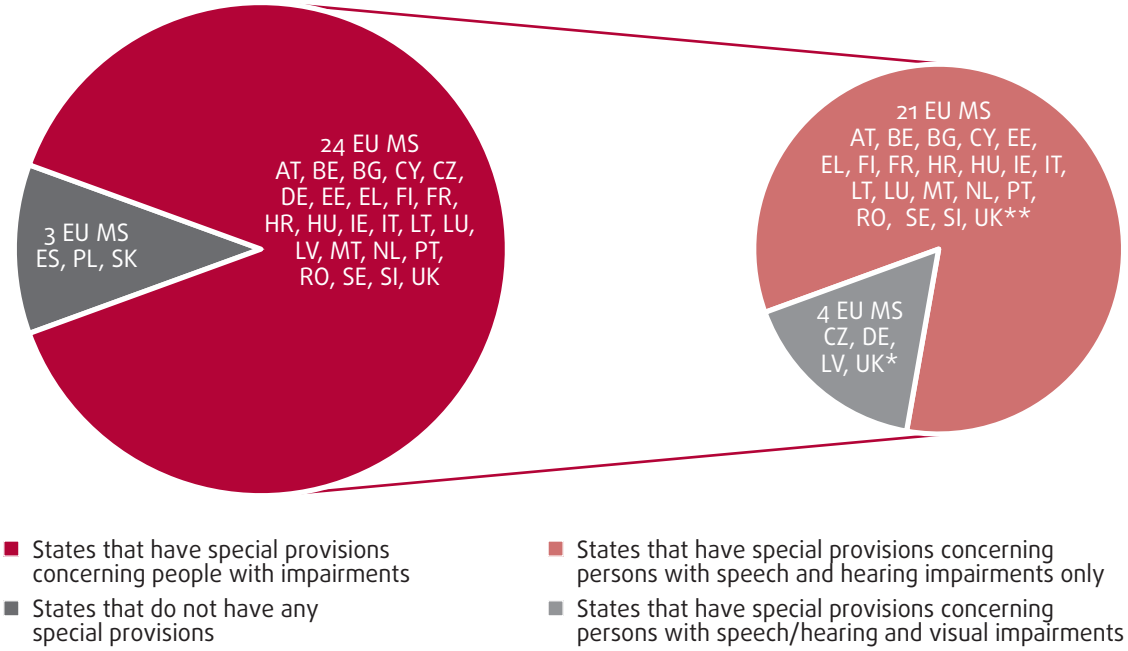
4.1.1. Interpretation and translation services for persons with speech, hearing or visual impairments

Under Directive 2010/64/EU, persons with speech and hearing disabilities who communicate in sign language only are to be treated as persons who do not speak or understand the language of the criminal proceedings and therefore provided with interpretation (pursuant to Articles 2(1)–(3)) and translation of all essential documents (pursuant to Article 3(1)). Some individuals who use sign language would not necessarily understand the written language of proceedings conducted in their own national state.[680] Therefore, presenting them with documents in standard written form would not secure their right to access those particular documents. Correspondingly, persons with visual disabilities who read braille only are to be provided with a written translation in Braille of all essential documents (under Article 3(1) of the directive).

Sign language interpreters may be deaf or hearing. Deaf interpreters may work between two sign languages; between a sign language and a modified version of the same sign language (e.g. for deaf-blind people

680 For details, see Azbel, L. (2004).

Figure 8: Legal provisions on interpretation and translation for persons with speech, hearing or visual impairments in EU Member States



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive. In the United Kingdom, the rules differ in England and Wales and in Scotland and Northern Ireland, so the UK is shown twice.*

** UK – Scotland and Northern Ireland.*

*** UK – England and Wales.*

Source: *FRA, 2015*

or individuals who have not acquired a full sign language); or between a spoken language and a sign language (using a hearing interpreter or scrolling text to access the spoken language). Interpreters who are not deaf interpret between a spoken language and a sign language.[681]

Figure 8 shows which EU Member States have laws that refer to the necessity of providing interpretation or translation services to persons with speech, hearing or visual disabilities.

In 24 Member States, national rules explicitly entitle suspects or accused persons with hearing and speech impairments to sign language interpretation or other forms of communication assistance – for example, in writing or, as in the Czech Republic, via real-time transcription of spoken words.[682] Furthermore, in the United Kingdom (England and Wales), when a suspect or accused person communicates in a sign language different from a British Sign Language, two interpreters are appointed; this is known as relay interpreting.[683]

Four of these 24 Member States – the Czech Republic, Germany, Latvia and the United Kingdom (Scotland and Northern Ireland) – additionally include provisions on interpretation or translation for persons with visual impairments. The laws in the Czech Republic and Germany explicitly provide persons with visual disabilities the right to demand the most suitable form of communication (including braille, large print, electronic, acoustic, oral, telephonic or other forms).[684] Latvia's criminal procedural rules contain a similar – although more general – provision stating that a person's right to use the language that the person has knowledge of, and to use the assistance of an interpreter free of charge, also applies to persons with hearing, speech or visual impairments. When issuing procedural documents to such persons, it shall be ensured that the documents

681 More information is available on the website of the World Federation of the Deaf.

682 Czech Republic, Law on Communication Systems of Deaf and Deaf-Blind Persons (*Zákon o komunikačních systémech neslyšících a hluchoslepých osob*), 11 June 1998.

683 United Kingdom, HM Government (2007), Office for Criminal Justice Reform, *National Agreement on the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings in the Criminal Justice System* (2007), para. 4.9.7.

684 Germany, Code of Court Constitution (*Gerichtsverfassungsgesetz*) Section 191a, 9 May 1975; Czech Republic, Law on Communication Systems of Deaf and Deaf-Blind Persons (*Zákon o komunikačních systémech neslyšících a hluchoslepých osob*), 11 June 1998.

are made available in a language or form in which the persons are able to understand them.[685]

In the United Kingdom (Scotland), guidance is provided to the police force to ensure that blind persons are fully aware of any documentation they may have to sign.[686] In the United Kingdom (Northern Ireland), if a suspect or accused person who has a speech or visual impairment, is blind, unable to speak, or deaf, requires an interpreter or appropriate assistance to enable effective communication, they shall not be interviewed without an independent person capable of interpreting or without assistance.[687] The NI Courts and Tribunals Service has a contract with Action on Hearing Loss (RNID) for the provision of sign language and speech-to-text services.

Promising practice

Assisting vulnerable persons with significant communication deficits in the criminal justice process via intermediaries

In the United Kingdom (Northern Ireland), registered intermediaries (RIs) – such as speech and language therapists and social workers – assist vulnerable victims, witnesses, suspects and defendants who have significant communication deficits with communicating their answers more effectively during police interviews and when giving evidence at trial. Communication difficulties can arise, for example, due to learning disabilities, Autistic Spectrum Disorder, mental health issues, neurological disorders or physical disabilities, or by virtue of young age.

The RI Schemes currently operate in respect of all cases being heard in the Crown Court for offences that are triable on indictment. If a police officer, prosecutor or defence solicitor realises that a vulnerable person may have communication difficulties, they should apply to the Department of Justice's Intermediaries Schemes Secretariat for a Registered Intermediary.

Source: United Kingdom, Northern Ireland Department of Justice Intermediaries scheme.

685 Latvia, Criminal Procedure Law (*Kriminālprocesa likums*), 21 April 2005.
686 United Kingdom, representative from Police Scotland.
687 United Kingdom, HM Government (2015) Department of Justice for Northern Ireland Police and Criminal Evidence (Northern Ireland) Order 1989 Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 1 June 2015, para. 13.5.

4.1.2. Providing information about rights to persons with speech, hearing or visual impairments

Promising practice

Training police on more effectively explaining rights and procedures to suspects or accused persons with hearing impairments

England and Wales have adopted various measures to allow police officers to communicate with persons with hearing impairments, including those accused or suspected of crime. Some regions employ the Police Link Officers for the Deaf (PLOD) scheme, which gives officers basic British Sign Language training. While these officers do not act as interpreters for deaf suspects, they can explain rights and procedures – with the aim of providing equal access to the police to individuals who are deaf and would otherwise have to rely on written forms of communication.

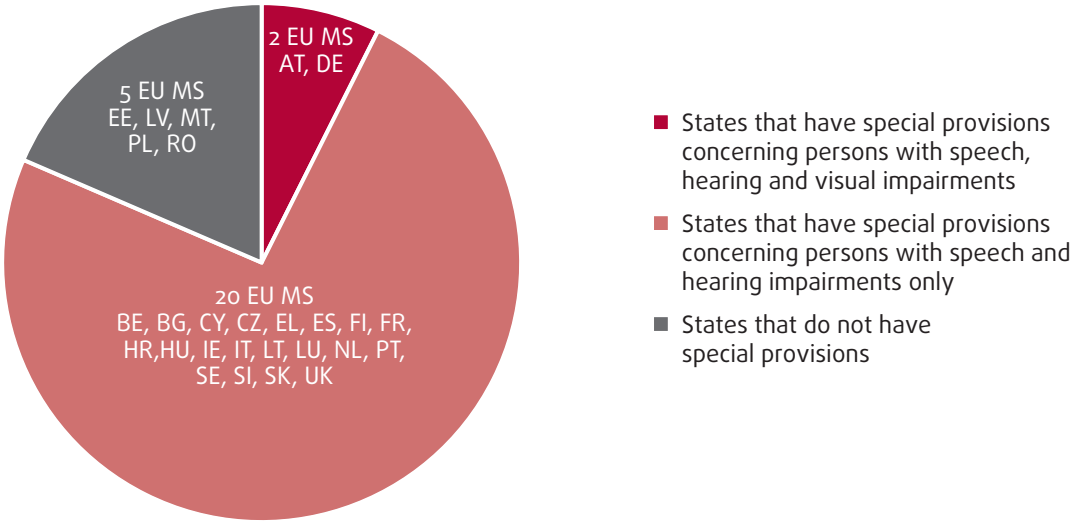
Sources: Trevor Jones and Tim Newburn, 'Widening Access: Improving police relations with hard to reach groups', Police Research Series Paper 138 (Home Office 2001); Raxit Ramani, 'Police station screens help visitors in 20 languages', The Job, July 2012, p.5.

A majority of EU Member States' criminal laws refer to the need to adopt appropriate measures to inform persons with speech and hearing disabilities about their rights – while only two EU Member States have provisions explicitly referring to the needs of persons with visual impairments. Figure 10 presents an overview.

Regarding providing information about procedural rights, as Figure 9 shows, two Member States (Austria and Germany) have specific rules requiring assistance for persons with speech, hearing or visual impairments. In Austria, if necessary, courts have to use technical aides (braille, etc.) to ensure that blind persons without legal aid understand the content of documents. A sign language interpreter has to be provided in all cases involving persons with speech and hearing impairments.[688] In Germany, suspects or accused persons with physical impairments can demand that an interpreter is called in or information is made accessible in other suitable ways (such as in writing).[689] The laws of 20 Member States provide for assistance for people with hearing and speech impairments only, either through sign language interpreters or via written communication. Five EU Member States have not adopted any

688 Austria, Supreme Court (*Oberster Gerichtshof*), 13Os46/03, 14 May 2003.
689 Germany, Code of Court Constitution (*Gerichtsverfassungsgesetz, GVG*), 9 May 1975, Section 186.

Figure 9: Provisions in EU Member States on informing persons with speech, hearing or visual impairments about their procedural rights in an appropriate manner



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive.*
Source: *FRA, 2015*

specific measures to inform persons with speech, hearing or visual impairments about their procedural rights.

In relation to the obligation to provide suspects and accused persons with a written Letter of Rights, when individuals with physical disabilities are involved, most EU Member States seem to rely on the assistance of sign language interpreters to secure the provision of information included in the letter of rights or about the accusation. Only a few Member States have rules that contain more nuanced recommendations concerning the needs of persons with physical disabilities. In Germany,[690] there are rules providing that written documents concerning persons with visual impairments should be made accessible to them – for example, by translating the information into braille or providing it in another format, such as in large-print or audio. In the Netherlands,[691] persons with visual impairments can also access an audio version of the Letter of Rights.

4.2. Persons with intellectual disabilities

This section provides a comparative analysis of national laws across the EU on the right to interpretation and translation and the right to information of persons with intellectual disabilities suspected or accused of crime. It looks at whether EU Member States' laws contain specific provisions to ensure interpretation and translation for, and make crucial information accessible to, this group of persons.[692]

690 Germany, Code of Court Constitution, Section 191a; Regulations concerning the barrier-free accessibility of documents for blind and visually impaired persons in judicial procedures (*Verordnung zur barrierefreien Zugänglichmachung von Dokumenten für blinde und sehbehinderte Personen im gerichtlichen Verfahren – Zugänglichmachungsverordnung – ZMV),* 26 February 2007.

691 An audio version of the Letter of Rights can be downloaded for persons with visual impairments and for illiterate persons via the website of the Dutch government.

692 For FRA research on the rights of persons with disabilities, including discussions on accessing justice in cases regarding legal capacity, see FRA (2012), pp. 40–41, and FRA (2013), pp. 19–22.

Promising practice

Providing data and training to practitioners and family members to better support people with intellectual disabilities

According to the *Guide of promising practices on legal capacity and access to justice,* up to *90 %* of people with intellectual disabilities may have support needs regarding comprehension, expression, social communication or literacy. During contacts with legal professionals, people with intellectual disabilities often have the following difficulties:

- they are unable to understand the information they are being given or the questions they are asked;
- people in the justice system misinterpret the communication and behavioural issues resulting from an individual's intellectual disability;
- they may not have support to ensure that they can understand the information they are given and to facilitate the expression of their wishes.

The guide emphasises the need to raise awareness and sensitise judges and other officials. It also stresses the need to provide written information in easy-read language.

The guide refers to the example of Israeli law, which permits defendants with intellectual or mental disabilities to give evidence in a modified court procedure. Therapeutic professionals (for example, psychologists and social workers) experienced in working with persons with intellectual and psycho-social disabilities are present and can intervene during questioning to redirect the questioner, or to help the court better understand the answers provided.

Source: Access to Justice for persons with Intellectual Disabilities (AJuPID) (2015), Guide of promising practices on legal capacity and access to justice: Reflections for the implementation of the articles 12 and 13 of the UN Convention on the Rights of Persons with Disabilities*; Villamanta Disability Rights Legal Service Inc (2012),* People who have an intellectual disability and the criminal justice system.

No specific legal provisions on interpretation and translation services for people with intellectual disabilities were identified in the EU Member States.

The situation concerning the right to information is slightly different – some EU Member State legislation does contain provisions aiming to facilitate the provision of information to persons with intellectual disabilities. Figure 10 shows which EU Member States (except for Denmark) have laws that refer to the need to take account of the specific needs of persons with intellectual disabilities suspected or accused of crime when they are provided with information about their procedural rights.

As outlined in Figure 10, four Member States have such legal provisions. Legal rules in Croatia,[693] Hungary[694] and Greece[695] oblige national authorities – although only in a general manner – to make sure that information has been provided and understood, specifically taking into account the suspect's or accused's intellectual abilities. In the United Kingdom, the law requires an appropriate adult whose role it is to assist a person with intellectual disabilities to also ensure that the person understands and responds accordingly.[696] In practice, most Member States rely on the assistance of a third party – for example, a guardian who is generally present during the criminal proceedings – to facilitate providing information about rights.

Promising practice

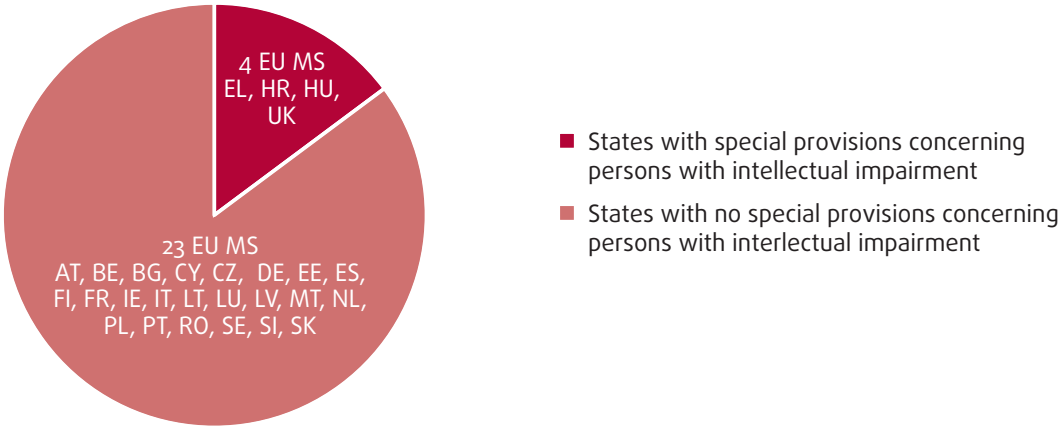
Providing an easy-read version of the Letter of Rights

In the United Kingdom (England and Wales and Scotland), an easy-read version of the Letter of Rights is available for persons with intellectual disabilities. It uses short, straightforward sentences and pictograms.

Source: UK, Home Office (2012), Notice of Rights and Entitlements: Easy Read*; UK, Scottish Government (2015),* Letter of Rights.

693 Croatia, The Criminal Procedure Act, Art. 108, 273 and 413.
694 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*), introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 62/A.
695 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 99A.
696 United Kingdom, England and Wales: HM Government (2014) Police and Criminal Evidence Act 1984 (PACE) Code C Revised Code of Practice for the Detention, Treatment and Questioning of Persons By Police Officers (2 June 2014), paragraph 1.7; Scotland: Response from Police Scotland, by email, 4 May 2015; Northern Ireland: HM Government (2015) Department of Justice for Northern Ireland Police and Criminal Evidence (Northern Ireland) Order 1989 Code C, Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, 1 June 2015, para. 3.10.

Figure 10: Provisions in EU Member States on informing persons with intellectual impairments about procedural rights and accusations in an appropriate manner



Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive.*
Source: *FRA, 2015*

Promising practice

Raising police awareness about the special needs of persons with intellectual disabilities

An ongoing Portuguese project called *Significativo Azul* (The Meaningful Blue), which started in December 2013, aims to raise awareness of the specific protection and communication needs of people with intellectual disabilities or multiple disabilities. Training sessions are tailored for police officers and other workers within organisations that provide support to people with disabilities and within organisations that focus on rehabilitation and on violence and crime prevention.

The project is based on a training exchange between stakeholders (with police providing training to organisations and these to police agents). Police officers receive information about tools and procedures for communicating with people with intellectual or multiple disabilities, and on providing information in a simple and accessible manner.

Police training focuses mainly on communication skills, needs assessment, understanding reactions and needs, referral systems, addressing preconceptions, and the rights of people with disabilities. The training covers both theoretical and practical aspects. In the project's second stage, materials containing simple and accessible information will be created. In addition, this will feature new training directed at people with intellectual and multiple disabilities and their families.

*Source: National Federation of Cooperatives of Social Solidarity (*Federação Nacional de Coperativas de Solidariedade Social*, FENACERCI).*

4.3. Children

This section provides a comparative analysis of national laws across the EU on the right to interpretation and translation and the right to information of children suspected or accused of crime. The two directives do not specifically mention children, but do refer to the obligation to protect the most vulnerable individuals.[697] The requirement to secure the effective participation of children as a vulnerable group in criminal proceedings is a long-established principle in European and international law.[698] In particular, universally recognised standards are set out under the CRC, which has a special status in EU law because it is ratified by all EU Member States and is considered part of the general principles of EU law (see Chapter 1).

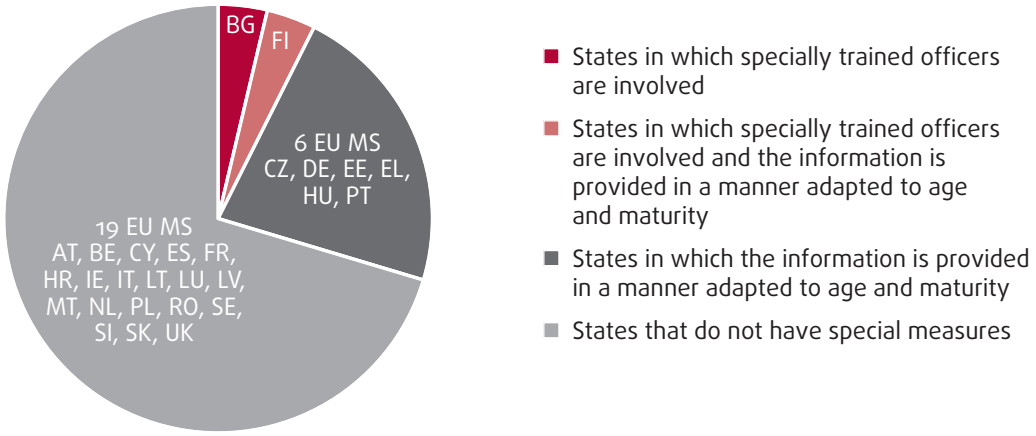
It should be noted that the new Directive on procedural safeguards for children suspected or accused in criminal proceedings, adopted on 21 April 2016,[699] will provide a number of procedural safeguards for children (individuals below 18) suspected or accused of having com-

697 Council Directive 2010/64/EU, Recital 27; Council Directive 2012/13, Recital 26 and Art. 3.

698 EU Charter of Fundamental Rights, Article 24; UN Convention on the Rights of the Child of 20 November 1989; ECtHR, *V. v. The United Kingdom,* No. 24888/94, GC 16 December 1999. See also Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, adopted on 17 November 2010. Various aspects of children's participation as witnesses or victims (not as suspects or accused) in legal proceedings are explained in depth in FRA (2015a). See also FRA (2015b) and European Commission, statistical data from all EU Member States on children's involvement in judicial proceedings, covering legislation, regulations and policies as of 1 June 2012 that affect the treatment of children in judicial proceedings (including those suspected and accused of crime).

699 Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, 16 March 2016.

Figure 11: Special measures in EU Member States to inform children about their procedural rights in an appropriate manner



Note: Pursuant to its specific opt-out regime, Denmark is not bound by either directive.
Source: FRA, 2015

mitted a criminal offence. The new directive includes safeguards in addition to those that already apply to suspected and accused adults in relation to, among others, the right to information about their rights. Article 4 requires Member States to ensure that children are informed promptly about their rights in accordance with Directive 2012/13/EU and about general aspects of the conduct of the proceedings. It then provides details on the additional requirements to be met when providing information about the rights set out in the new directive. Taking into account the specific needs of children, Article 5 of the new directive also provides for the right to information of the holder of parental responsibility or other appropriate adult.

Evidence shows that, as a rule in EU Member States, when a child does not speak the language of the proceedings, they are provided with interpretation and translation pursuant to the same rules as adults.

Some domestic laws provide for more specific measures in the context of the right to information. As shown in Figure 11, these states can be divided into two main categories: states in which specially trained officers have a specific role in the proceedings; and states with laws requiring relevant authorities to provide information in a manner adapted to age and maturity. Finland belongs to both categories: specially trained officers are involved and information is presented in a manner adapted to age and maturity.[700]

Figure 12 shows that eight states have specific legal provisions in place to facilitate providing information about rights to accused or suspected children. Legal acts in the Czech Republic,[701] Germany,[702] Greece,[703] Estonia,[704] Finland,[705] Hungary,[706] and Portugal[707] stress the need to use age-appropriate language and consider the level of maturity when explaining procedural rights and the nature of an accusation to children. In Bulgaria[708] and Finland,[709] interrogations are to be performed by specially trained officers.

Moreover, Bulgarian[710] statutes provide for the possible presence of a specialist with an educational or psychological background. This specialist can take part in the questioning, pose questions with permission of the investigator, check the content of the questioning records and make remarks in terms of its correctness and comprehensiveness. A child's parents or guardians are notified about the serving of an investigative file and may be present if they wish. Parents and guardians are always summoned during trial and are allowed to take part in the collection and verification of evidence.

700 Finland, Criminal Investigation Act (*Esitutkintalaki/förundersökningslag*), 805/2011, 1 January 2014, Ch. 4, Section 7 (2).

701 Czech Republic, Act on the Judiciary in Juvenile Issues (*Zákon o soudnictví ve věcech mládeže*), 25 June 2003, Section 41 and 57.
702 Germany, Police Service Regulation 382 (*Polizeidienstvorschrift, PDV 382*), 1997, non-binding.
703 Greece, Code of Criminal Procedure (*Κώδικας Ποινικής Δικονομίας*), 1 January 1951, Art. 99A (2).
704 Estonia, Director of the Police and Border Guard Board (*Politsei- ja Piirivalveameti peadirektor*), Guidelines on treating children (Unofficial translation) (*Laste kohtlemise juhend*), 20 January 2015, Decree no. 17.
705 Finland, Criminal Investigation Act (*Esitutkintalaki/förundersökningslag*), 805/2011, 1 January 2014, Ch. 4, Section 7.
706 Hungary, Criminal Procedure Code (*Büntetőeljárásról Elso Resz*), introduced by para. 28 of Act LXXII of 2014 (XXX), 1998, Art. 62/A.
707 Portugal, Law on Educational Guardianship (*Lei Tutelar Educativa*), 14 September 1999, Art. 104 (1).
708 Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*), 28 October 2005, Art. 385.
709 Finland, Criminal Investigation Act, Chapter 4, Section 7 (2).
710 Bulgaria, Criminal Procedure Code, Art. 388, 389 and 392.

In Portugal,[711] several measures are in place to promote a more sensitive approach to, and communication with, children – for example, the possibility for the hearing to take place outside of court premises, and for practitioners involved in a court hearing to forego wearing their formal attire; the requirement to use simplified language during the hearing; the possibility to request the assistance of psychologists and other experts; that only the judge can question a child; as well as the guarantee that children shall be made to feel free and only minimally constrained when heard.

FRA's 2015 report on professionals' perspectives on children's experiences in judicial proceedings, particularly as victims or witnesses to crime, highlighted multidisciplinary cooperation as a way of keeping children informed.[712] This means limiting the number of professionals involved and ensuring that one main contact person participates in the entirety of the proceedings and coordinates the other professionals in contact with the child. Children may forget some information over time, particularly during lengthy procedures. These factors make critical continuous support and information, including the repetition of information, which requires the various professionals involved to coordinate their efforts. In addition, the report noted that written informational materials alone are not very helpful, and are more useful when combined with counselling and support.

Directive 2012/13/EU does not specifically refer to the need to take into account the needs of children when providing them with a Letter of Rights or information on the accusation. Indeed, in most EU Member States, the 'adult' versions are also applicable to children. In fact, only the Netherlands and the United Kingdom (England and Wales) seem to have introduced letters of rights that take into account the typical maturity level of young persons. The Dutch letter considers individuals between the ages of 12 and 18 to be minors.[713] In England and Wales, an easy-read and illustrated version of the Letter of Rights is available for juvenile suspects.[714] There are other countries, such as France, that have specific letters of rights for minors. However, these letters only differ from the 'adult' versions in terms of their content – i.e. the letters include some minor-specific rights – rather than in terms of format and accessibility.[715]

Promising practice

Protecting rights via a national 'appropriate adult' network

The National Appropriate Adult Network, based in the United Kingdom, aims to protect the rights and welfare of children and vulnerable adults detained or interviewed by police. According to the law, police must call for an 'appropriate adult' whenever they have a suspicion, or are told in good faith, that a person may have a mental disorder or other mental vulnerability. The key responsibilities of 'appropriate adults' are:

- to support, advise and assist the child or young person while in detention, including during interviews
- to ensure that the child or young person understands their rights and that the adult has a role in protecting their rights
- to observe whether the police are acting properly, fairly and with respect for the rights of the child or young person and to tell them if they are not
- to assist with communication between the child or young person and the police.

'Appropriate adults' may include, for example: parents or other family members, friends or carers, as well as social workers or charity workers.

Source: United Kingdom, website of the National Appropriate Adult Network.

711 Portugal, Law on Educational Guardianship (*Lei Tutelar Educativa*), 14 September 1999, Art. 45 (1) and (2) d), 96 (1) and (2), 99 (1) and (2), 104 and 107.
712 FRA (2015a), pp. 61–62.
713 Several versions of the letter of rights (for adults, for minors and with respect to the EAW) can be downloaded in several languages from the website of the Dutch government.
714 United Kingdom, Home Office (2012), *Notice of Rights and Entitlements: Easy Read*, 26 March 2012.
715 France, Circular on the presentation of the provisions for criminal proceedings applicable on 2 June 2014 for the law transposing Directive 2012/13/UE of the European Parliament and the Council of 23 May 2012 relating to the right to information within the framework of criminal proceedings.

Conclusion and FRA Opinion

Vulnerable persons – for example, people with physical or intellectual disabilities or children – who are accused or suspected of committing a crime often require extra support to help them understand their rights and criminal proceedings in general.

Taking into account particular needs of vulnerable suspects and accused persons more effectively

FRA's findings show that most Member States' laws contain general references to the needs of persons with disabilities and children. However, national legislators rarely introduce more detailed rules, and other policy documents provide little guidance on how to accommodate these needs. Examples of promising practices identified during this research include: transcribing written materials into braille for individuals with visual impairments; providing pre-prepared audio-files containing the text of the Letter of Rights; offering easy-to-read versions of such letters and of other written information about rights; and using letters of rights that are specifically adapted for children.

FRA Opinion 9

While Directives 2010/64/EU and 2012/13/EU do not provide specific guidance on how to ensure that the needs of vulnerable suspects and accused persons are taken into account, EU Member States taking steps to ensure the protection of the rights of suspects or accused persons whose vulnerability affects their ability to follow proceedings and make themselves understood should ensure compliance with their international human rights law obligations. In particular, Member States should adhere to the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC) – and the interpretative elaborations made by the expert bodies monitoring these conventions. EU Member States are also encouraged to follow guidelines developed by the Council of Europe in this field, particularly its Guidelines on child-friendly justice. *In this context, the effective implementation of the new* Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings *will be essential. EU Member States are also encouraged to follow the guidance set out in the European Commission* Recommendation on the procedural safeguards for vulnerable suspected and accused persons in criminal proceedings *who are not able to understand and to effectively participate in such proceedings due to age, their mental or physical condition or disabilities.*

Concluding remarks

This report examined national legal frameworks and policies in the EU in light of Directives 2010/64/EU and 2012/13/EU, which set out the right to interpretation and translation and the right to information of suspected and accused persons in criminal proceedings. Opinions formulated on the basis of the research findings aim to offer concrete guidance on how EU Member States can safeguard the effective protection of suspects' and accused persons' procedural rights in line with these directives, with a view to ensuring a fair trial.

The right to interpretation and translation and the right to information are different in nature. The former reflects a technical issue resulting from an individual's necessarily limited linguistic capacities and the means of overcoming these limitations with a view to rendering practically effective the defendant's participation in the criminal proceedings. The latter concerns the appropriate timing, type and amount of information that must be provided to the accused. The aim is to empower suspects or accused persons as parties to the proceedings and the requirements represent an effort to create a balance between the powers of the prosecution and of suspects or accused persons – which is referred to as the principle of equality of arms. However, both rights belong to the important group of rights known as the 'rights of defence'. Therefore, these rights should never be seen in isolation but in the context of all other rights of defence, which together form part of the wider concept of the right to a fair trial.

The effective implementation of Directives 2010/64/EU and 2012/13/EU is only the first step towards establishing common minimum standards in all criminal proceedings across the EU. To achieve this broader goal, effective implementation of other complementary instruments envisaged under the Criminal Procedure Roadmap is indispensable.

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Annex: Rights set out in the Letter of Rights in EU Member States

	Access to lawyer	Free legal advice	Informed of the accusation	Interpretation and translation	Remain silent	Materials of the case	Notification of person of trust	Consular authorities	Urgent medical assistance	Maximum time a person can be deprived of liberty	Basic information about possibility of challenging the lawfulness of arrest, obtaining a review or requesting provisional release	Additional information?
AT	✓	✓	✓	✓	×	×	✓	✓	✓	✓	✓	×
BE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CY	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CZ	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
DE	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	✓	×
EE	✓	×	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
EL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
ES	✓	✓	×	✓	✓	×	✓	✓	✓	×	×	×
FI	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
FR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
HR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×	×
IE	✓	✓	✓	×	×	×	✓	✓	✓	×	×	✓
LT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
LU	✓	×	×	×	×	×	✓	×	✓	×	×	×
LV	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
MT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
NL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
PL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
PT	✓	×	✓	✓	✓	×	✓	✓	×	✓	×	✓
SE	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SI	✓	✓	✓	✓	✓	×	✓	✓	✓	×	✓	✓
SK	×	×	✓	✓	×	×	×	×	✓	×	×	×
UK: E &W	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
UK:S	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	×
UK: NI	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Note: *Pursuant to its specific opt-out regime, Denmark is not bound by either directive. Bulgaria does not have a Letter of Rights, and Hungary, Italy and Romania have multiple versions, with no official template, so these Member States are not included in this analysis.*

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Protecting the human rights of individuals subject to criminal proceedings is an essential element of the rule of law. Persons who are suspected or accused of crimes in countries other than their own are particularly vulnerable, making appropriate procedural safeguards especially crucial. The European Union (EU) has introduced various initiatives to strengthen relevant protections, including Directive 2010/64/EU on the right to interpretation and translation and Directive 2012/13/EU on the right to information. These aim to ensure that all suspects and accused persons promptly receive information about their basic rights, and that they receive translation and interpretation services where necessary to fully exercise their right of defence. This report reviews Member States' legal frameworks, policies and practices regarding the important rights provided in these directives, including with respect to individuals whose needs may require additional attention, such as persons with disabilities and children. Identifying opportunities to further bolster protection, the report aims to support Member States in their ongoing efforts to ensure justice across the EU.

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