TRAINAC

Assessment, good practices and recommendations on the right to interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings

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TRAINAC final report

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II - Introduction

This report has been produced as the outcome of the TRAINAC project, which was funded by the European Union's Justice Programme, whose aim was to provide an assessment by defence practitioners in the EU of the implementation of three directives:

- Directive 2010/64[1] on the right to interpretation and translation
- Directive 2012/13[2]on the right to information
- Directive 2013/48[3] on the right of access to a lawyer

As laid out in the project conditions, this final project report also contains examples of good practice, and recommendations whose aim is to ensure that the objectives of the three directives are fulfilled by the Member States.

The project lasted from 15 April 2015 to 14 April 2016.

Procedure

The project began with a kick-off meeting on 24 June 2015, where criminal law experts nominated by the delegations of the Council of Bars and Law Societies of Europe (CCBE) gathered to discuss draft questionnaires on the three directives. These drafts had been discussed in advance with the relevant policy officials of the European Commission (DG Justice and Consumers), who also attended the meeting. After the meeting further changes were made to the questionnaires in the light of the comments made, and the final versions were sent to all the experts on 29 June, with a three-month time limit for completion.

The questionnaires did not cover every article of the directives, and so neither does this report. Instead, certain themes were selected and agreed in advance with the European Commission, covering the main aspects of each directive. (There was practically no comment in the section of each questionnaire where the experts were asked whether they had comments on parts of the directives not covered by the questionnaire – and so it can be presumed that the themes covered all significant aspects.) This report will follow the structure of the questionnaires in dealing with the agreed themes.

The report is based on responses received from all Member States other than Denmark (which has exercised its right to opt out of the three directives), Germany and Romania. The United Kingdom and Ireland have opted into the directives on the right to interpretation and translation and the right to information, but not the right of access to a lawyer, and so there is no data from the UK in relation to the latter directive. There is data from Ireland nevertheless in relation to the latter directive, but not from the UK.

There was a second experts' meeting on 29 January 2016, at which the draft report, and particularly its recommendations, were discussed and amended.

The names and Member States of the contributing experts are attached as Annex 1.

The final versions of the questionnaires are attached as Annex 2 to this report.

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF

[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF

[3] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF

The tables representing the answers of the experts, which formed the raw data for the narrative, conclusions and recommendations of the report, are attached as Annex 3.

INFOCRIM[4]

In 2014, the European Commission requested the Fundamental Rights Agency (FRA) to look at specific criminal procedural rights of suspects and the accused across EU Member States. The project is intending to identify promising practices in the implementation of two of the directives covered by this report, namely on the right to interpretation and translation and on the right to information.

The FRA report will be primarily based on desk research with respect to relevant legislation, policies and practices in each Member State, and including the relevant standards of the Council of Europe and the United Nations. The results will be presented in a comparative report expected to be published in early 2016.

There has been liaison between FRA and this project, and both parties are satisfied that the two reports will be complementary and not overlap significantly, particularly because this report focuses principally on the experience of defence practitioners in the implementation of the three directives.

[4] http://fra.europa.eu/en/project/2015/right-interpretation-and-translation-and-right-information-criminal-proceedings-eu

III - Summary of main recommendations

The following recommendations are drawn from the responses received, including about good practices followed in some Member States. The reason why there are more recommendations in relation to the directive on interpretation and translation may be because it has been in force for longer. Regarding the right of access to a lawyer, it should be borne in mind that it is has not yet been implemented in many Member States since the date for scheduled implementation is only 27 November 2016.

The right to interpretation and translation

Quality of interpreters and translators

- a register of legal interpreters and translators should be established in every Member State, accessible to the public, including of course lawyers, with standards set for entry onto the register, rules for exclusion when standards are broken (as further developed in the bullet point immediately below), and qualifications and specialisations of each candidate registered against each name – in other words, an expansion of the scope of Article 5.2 of the directive

- there should be a code of conduct established for EU legal interpreters and translators (which could be based, for instance, on the EULITA Code of Ethics), which should have among its clauses the following principles:

  (a) that it is not good practice for an interpreter or translator who has worked for the investigative authorities to work at the same time for the defence, and vice versa

  (b) that the interpreter interpreting the communication between the suspect and his/her lawyer is held to a strict professional secrecy toward the investigative and judicial authorities (or words to that effect), to ensure the strict confidentiality of the communication between lawyer and suspect who do not speak the same language – in other words, an expansion and clarification of Article 5.3

  (c) that independence of interpreters requires that they do not adopt a more favourable approach towards the person or body which has appointed them (police, prosecutor, judge)

  (d) that breach of the code of conduct may lead to exclusion from the register mentioned in the previous bullet point

- there should be a recognised specialism in legal interpretation and translation, with common standards around Europe

- there should be an increase in training and monitoring of legal interpreters and translators in the EU (as well as of judicial stakeholders regarding effective communication through an interpreter)

- there should be a system established in each Member State for independent assessment and evaluation of the work of interpreters and translators, with precautions taken to ensure that the system does not breach confidentiality or data protection rules nor deal with material that is not in the public domain

- audio and/or video recording of all interviews and hearings* of the suspect or accused should be introduced (apart from those between the suspect or accused and his or her lawyer, so

as to preserve the principle of confidentiality of communications between lawyer and client), so as to:

(a) ensure that quality can be monitored in those which are interpreted;

(b) enable a decision to be reviewed about whether interpretation should have been provided in the first place in those which are not interpreted; and

(c) (see below under 'Right of access to a lawyer' for a fuller explanation) guarantee that the waiver of the right to a lawyer is freely given and based on the principle of full information

(*Special arrangements for the recording of the simultaneous interpretation may have to be made in lengthy trials where such an interpretation method is adopted.)

- Articles 2.5 and 3.5 of the directive should be extended beyond merely giving the suspect or accused the right to complain about the quality of the interpretation and/or translation: the suspect or accused should also have the right to change the interpreter and/or translator on the grounds of quality

- the impact of the migration crisis on the directive should be urgently considered, for instance its impact on languages that are so far rare in many Member States, and how EU resources can be allocated to assist with interpretation and translation into these new languages

- the integration into the criminal justice system of interpreters and translators should be improved, with speedier access to necessary documents, better training of all concerned, and amelioration of working conditions (both physical and financial), also with the aim of ensuring the independence of legal interpreters and translators

- a glossary of the most important criminal legal terms should be established, similar to – and, if possible, linked to - the existing on-line database IATE, translated into the most common European and foreign languages, to be promoted widely to the Member States and placed on the European Commission's e-justice portal

<u>Number of interpreters and translators</u>

- efforts should be made to increase the number of qualified legal interpreters and translators for a number of reasons: for instance, to ensure that the same interpreter does not work for the investigative authorities and the defence (see above), or to ensure that a different interpreter is used at the trial stage from the one used in the investigative stage

<u>Communication between suspect or accused and lawyer</u>

- the wording of Article 2.2 should be extended so as to provide the suspect or accused with the right to interpretation while he or she is communicating or consulting with the lawyer from a place of custody, from remand or from prison, at the police station or the court (where the communication relates to the ongoing pre-trial investigation and/or court hearing), and not just '*in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications*' as at present

Essential documents

- Article 3.5 of the directive should be extended and clarified so that reasoned requests in writing from the suspect or accused or defending lawyer to have necessary documents translated should be granted, and any refusal should be amenable to appeal to a court

The need for an interpreter

- detailed guidance should be established at EU level developing principles and procedures for determining whether a person needs an interpreter, in order to give reality to the general wording of Article 2.4

- a new provision in the directive should be considered whereby, if an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, that act becomes null and void

Emergency access to interpreters

- consideration should be given to whether all police stations and detention centres should have an interpreter telephone at their disposal. By picking up the phone, a direct connection would be made with an interpreter agency. In case of emergency, such as directly after the arrest of a suspect, telephone or Skype communication with an interpreter may be a good alternative to the physical presence of an interpreter

Timetable for provision of translated documents

- consideration should be given to whether agreed timescales should be developed, under the control and review of the court, for the provision of translated documents to the accused should be developed

Right to information

Information about the accusation

- as best practice, the arrested person and his or her lawyer should have access to any documents or evidence which would be ordinarily disclosed in proceedings and which the police possess in their file before police questioning regarding the reasons for the arrest (namely report, victim statement, witness statement, expert statement, etc.), unless such access would lead to the circumstances set out in Article 7.4 of the directive, or if a judge declares that the investigation is *ex parte*

- the directive should cover not only free access to information about the criminal proceedings, but also provide the suspect or accused with the right to obtain free copies of the material that is going to be used against him or her in court, because the definition of 'essential documents' in Article 3 of the directive may not cover all the appropriate documents to be able to challenge the lawfulness of the arrest

Training

- there should be improved training about defence rights within national police services (see also below about training on the handling on the waiver of the right of access to a lawyer)

Use of technology

- national competent authorities should devote more resources towards the use of technology for the provision of documentation to the defence: CD ROM or USB stick, or even better online access to court files. It is vital, though, that the material has true electronic properties (i.e. it is properly indexed, searchable, etc.)

Information given on more rights than required in the Letter of Rights

- good practices from some Member States should be widely publicised at EU level in relation to giving more information than required in the Letter of Rights e.g. on the right to correspondence and telephone calls and restrictions on those rights

Right of access to a lawyer

Waiver of right of access to a lawyer

- a major improvement would be to re-instate the original European Commission proposal and require mandatory contact by a suspect or accused with a lawyer before waiving the right to have a lawyer present at the interrogation of the suspect or accused. This is because, in practice, the police often put pressure on the suspect or accused to waive the right to a lawyer. In order to prevent such practice, the suspect or accused should have at least telephone contact with a lawyer; otherwise the interrogation should be held to be unlawful

- as stated above under 'Quality of interpreters and translators', the complete interview – including the waiver - should be taped (video and/or audio), and consideration given to a rule whereby any unrecorded interview should not be able to be used as evidence

- urgent consideration should also be given as to whether the waiver should be signed in the presence of a lawyer, who has first explained the relevant rights to the suspect or accused

- it should be established as good practice at EU level that each interview should begin with a reminder to the detained person of his or her entitlement to have a lawyer present, along with a requirement that the waiver be repeated if insisted upon

- as part of improved training about defence rights within national police services (see 'Right to information' above), proper training should be continuously provided to ensure that the handling of a waiver is carried out in compliance with the requirements of the directive.

- urgent consideration should be given as to whether the waiver should be permitted at all (since in some Member States it is forbidden without any apparent problems), or whether it should be a declared good practice that it is not allowed, with particular attention given to the role of thresholds regarding the gravity of the offence

Legal Aid

- an EU legislative act on legal aid is an essential measure to ensure the right of access to a lawyer.

IV - Right to interpretation and translation

General

Apart from Greece (where the directive is not properly applied), the legal mechanism for the right to interpretation is available for suspects and defendants. Belgium and Luxembourg have not yet implemented the directive, but their respondents report that law and practice in those Member States already cover most of the directive's requirements. Nevertheless, there are interesting problems in practice in many jurisdictions, which are doubtless reflected more often than they were actually raised in answers, and are likely to be an indication of how the directive is working on the ground everywhere.

The available number of interpreters and their quality were topics raised in many answers. There is a specific theme dealing with quality below but respondents felt that that it was a topic running throughout discussion of implementation of the basic rights contained in the directive, for the following reasons.

The EU institutions have very laudably instituted rights to a service, but without ensuring that there is an adequate and qualified supply to meet the demand. It is not just a question of brute numbers, although that is a problem, particularly with rare languages. There is also a quality problem with the knowledge of legal terminology, which is a complex specialism, and sometimes with the knowledge of criminal slang. This problem is doubtless set to become much more acute with the influx of refugees and other migrants from the summer of 2015 onwards, an issue not reflected in the answers given because the respondents were completing the questionnaires just as the most serious influx was starting. It is obvious that if there is migration of a particular language group to a country with no history of such language speakers living there, nor previous historic involvement between the countries, there is unlikely to be an adequate supply of interpreters in that language. It is in this context that the right to interpretation will probably be subjected to severe strain, to the point possibly of not being able to be exercised in compliance with the directive. That is why numbers and quality, which are related, pose a threat to all the directive's rights. (For the avoidance of doubt, the mention of the migration crisis is not meant to suggest that migrants are more likely to commit crimes than anyone else, but only to raise the point that a large influx of rare language-speakers is likely to cause stresses to the supply of interpreters and translators in that language.)

Theme 1 – right to interpretation

The right to interpretation in criminal proceedings shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected 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.

Member States shall ensure that a procedure or 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.

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

Communications between the suspect or accused and the competent authorities

One respondent (Finland) reported that the investigating authorities sometimes used a common third language with the suspect or defendant, presumably most often English – and it was only later, when a lawyer was appointed, that it was discovered that the knowledge of English by one or other party was deficient.

The presence of a lawyer is indeed a crucial factor, and shows how this directive and the directive on the right of access to a lawyer are interdependent, the one bolstering the other. It was pointed out (Ireland) that the presence of a lawyer from the very beginning should ensure that problems such as the one raised in the previous paragraph should be spotted earlier, because the lawyer will be able to tell soon whether someone has a sufficient command of, say, English for the interview to proceed. A lawyer may also help with the question of whether a complex aspect of law or part of a document, presented orally for the first time to a suspect unfamiliar with the terminology, and really requiring repetition or further study, has been properly understood, not only in its use of words, but also in terms of its legal consequences.

Inability to find an interpreter can obviously cause a delay in providing interpretation facilities, thus undermining another of the directive's aims. This may become a growing problem as resources are stretched. The use of technology may help: a couple of respondents reported that, to save time, interpreters were occasionally employed via phone or video. Clearly, as with all use of technology in the justice sector, there may be concerns about this, since communication clearly works better when all participants are present in the same place and able to see each other. In other words, technology is good to solve the question of speed, but physical presence is better.

The European Legal Interpreters and Translators Association (EULITA) was consulted in the course of drawing up the report, since they provide the perspective of a different actor in the process. On the question of delay in provision of interpreters at police stations, EULITA pointed out that the "without delay" requirement for the provision of interpreting services is frequently difficult to comply with, as legal interpreters for all required language combinations cannot be available on a 24 hours/7days-per-week basis. EULITA would like to see encouragement by the authorities for setting up interpreter hubs (e.g. Metropolitan Police London). This should also permit a more widespread use of new technology, particularly video-conferencing.

Finally, the number-and-quality issue raised its head in another aspect. Scotland reported on a good practice that the identity of the interpreter used at the investigative stage is noted to ensure that, so far as possible, the same interpreter is not used for the court proceedings. The serious problems related to the use of one interpreter throughout are discussed in more detail immediately below, but the topic is raised here merely to point out that renewal of interpreters for the different stages clearly becomes more difficult if resources are stretched.

Communications between the suspect or accused and their legal counsel

The right to interpretation in communication with legal counsel is not guaranteed by law everywhere. The Czech Republic, Lithuania and Portugal do not provide a comprehensive guarantee:

- Lithuania - the lawyer can communicate with the client either via an interpreter who works at the police station, at the prosecutor's office or at the court, or via an interpreter who is invited or hired by the police station, the prosecutor's office or the court, but only during questioning by the police, prosecutor, pre-trial investigation judge and during the court hearing. A person who has sufficient personal funds can invite a private interpreter for communication with a lawyer (if he/she has the prosecutor's or judge's permission to meet with an interpreter), but the state has no obligation to pay for this interpretation. If a person does not have sufficient financial resources, he/she has no possibility to communicate with legal counsel and to obtain proper advice during the ongoing criminal procedures outside the framework of questioning and court hearing mentioned above.

- Czech Republic - the right becomes operational by law only in 'the course of legal acts', which seems to exclude preparatory work between lawyer and client (however, no actual problems about this faulty wording have yet been encountered).

Elsewhere, despite the directive saying that Member States have to ensure the right of interpretation during communication with lawyers, it has to be specially requested in many of them (for instance, in Spain, or in France, where authorisation is granted by an investigation judge or court judge).

Ireland reports a more serious problem, already alluded to in the previous section. At the police station and at court, the same interpreter is used to interpret for the authorities as is used to interpret private consultations between lawyer and client. This leads to confusion in the suspect, who identifies the interpreter as part of the defence team (since the suspect typically meets the lawyer and interpreter before meeting with the interviewing police). In the subsequent police interview, the suspect then treats questions coming through the interpreter as though they were questions posed by his or her own lawyer, and accordingly may volunteer information which is detrimental. Equally, there have been instances where interpreters have unwittingly introduced information into an interview which was communicated on a confidential basis in an earlier consultation, by way of clarifying a reply.

Hungary reports a similar problem in that only official interpreters are available under the directive's provisions. Lawyers sometimes do not wish to have confidential conversations with their clients in the presence of an interpreter supplied by the authorities, despite interpreters also having a secrecy obligation. Typically, lawyers either try to communicate on their own with the client, or apply for a private interpreter.

Bulgaria has clearly come across the same problem, because it is reported that there is a new rule there stating that a witness is not to be interrogated about circumstances that she/he became aware of in the capacity of interpreter during communications between the accused and the defence lawyer. That is a partial solution to the problem, but will not allay the suspicions of some lawyers in some cases.

The general view of defence practitioners is that it is highly dangerous not to have separate interpretation provided to the defence and the authorities.

EULITA raises another problem. They point out that problems can occasionally arise over the payment of the interpreter's fee, arising from a scarcity of resources: courts wish to minimise the expense arising from interpreting services, and so limit either the number of meetings between lawyers and their clients, or the length of these meetings.

The procedure or mechanism for ascertaining understanding of language

Respondents generally reported that there was no formal procedure introduced in their implementing legislation or rules for a procedure or mechanism. There were informal ways of dealing with the matter (asking the suspect or defendant whether he/she understood, observation etc.), and generally no problem was encountered.

In England and Wales, there is guidance in the Codes of Practice for determining whether a person needs an interpreter at the police station. This guidance suggests that a telephone interpreter service is used, or cue cards or other visual aids are used, to determine a person's ability to speak and understand English. The provision of such materials and assistance, though, is a matter for individual police forces.

In most Member States, where there is the slightest question about understanding the native language of the jurisdiction, an interpreter is provided; also if the suspect or accused, or his/her lawyer, request it. Ireland pointed out that because police interviews there are now audio-visually recorded, and conducted in the presence of a lawyer, there will at least be objective evidence to review as to whether or not an interpreter ought to have been supplied.

EULITA points out that, in the case of migrants, judges tend to overestimate the language knowledge of a defendant who has lived in a given country for several years, and may insist that they should speak the language used in court.

The right to challenge a decision or complain about quality

Not all Member States have included a legal right both to challenge a decision and complain about quality. The Czech Republic and Poland, for instance, do not have legal provisions for either, and in Finland the remedies do not amount in practice to full rights for both. Austria and Lithuania have no procedure for complaining about quality. In many cases, there are only limited remedies, such as discretionary ones, or appeals to officials (for instance, the prosecutor) and not to the court.

There may also be a problem with how 'quality' is defined (or not defined). A good example comes from Bulgaria where 'accuracy' is the accepted basis of the complaint instead of 'quality'. However, this may not always be the same thing, particularly in cases of legal terminology where there might be quite different legal consequences dependent on the nuanced meaning of a word.

Replacement of the interpreter (for instance, Hungary and Spain) is often possible, but that also is not quite the same thing as having a right to complain about quality.

Ireland points out a reality on the ground: that most advisers would often prefer their clients to remain silent on the basis that they cannot understand the questions rather than have the situation corrected in a court.

EULITA states that it would wish to encourage lawyers to take the initiative more often to comment and/or complain about the quality of the interpreting services provided in a specific case. Lawyers should also be encouraged to inquire before a hearing who the interpreter will be, as well as his/her qualifications, especially if the case requires long sessions or is complex in nature.

Theme 2 - right to translation

The right to translation shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

As an exception to the general rules, 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.

Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

General

The impact of the directive on resources is very visible in the exercise of this right. There is no common practice on which documents are translated, and clearly resources are one of the driving factors in reducing the number of documents translated, often below the minimum requirement of the directive. This can be seen particularly in the frequency with which respondents mention that documents are not translated if they have been explained orally beforehand. This problem is likely to grow worse – see the example of Hungary below – as the effects of the refugee crisis are felt around the EU.

Finland reports what must be a common problem in more complicated cases in which the documentation can run to thousands or tens of thousands of pages. The police simply decline as a result to translate any of the pre-trial material. In one case, the prosecution said that, since the defendants had a lawyer capable of going through the material, there was no need to translate any documents, especially when the documents considered relevant by the police had already been translated orally during the interrogation. This had the effect of transferring the competent authority's duty to the lawyer.

Similarly, the Netherlands reports that the directive has been implemented too restrictively. For instance, a 16-page indictment containing an accusation of complicated fraud is considered sufficiently translated if the translation contains the few simple words that 'the defendant is suspected of committing forgery of documents in the Netherlands between 2004 and 2012'.

In Hungary, the effect of the 2015 refugee crisis is already felt in the implementation of this right. Newly enacted provisions regarding procedures against refugees/migrants provide that the authorities are not obliged to translate either the charge or the decision of the court, but only to explain them orally during the trial through an interpreter.

Other examples are:

- Belgium (where the directive is not yet implemented) - only translates documents into its official three languages: French, Flemish, German.

- Greece - only the indictment is translated, and the remaining documentation has to be communicated orally by the lawyer to the client.

- Ireland – the Irish respondent specifically refers to the problem of resources, and says that, as a result, oral translation is the general rule, and that at the end of questioning the charge will be handed over in English.

- Sweden - written translations of documents are very rarely provided to the suspect or accused. A written translation of a decision depriving a person of liberty or of a judgment is generally not considered necessary if the decision is delivered orally during a hearing at which an interpreter is present.

Whereas France reports that there is no timetable for the provision of translation, there is good practice from Scotland where, as part of the Code of Practice, there are agreed timescales for the provision of translated documents to the accused (from 3 to 14 working days).

In other words, there are serious defects both with the implementation of the legal provisions and, even more so, with the practice on the ground.

It is worth noting here the *Covaci* case (C-216/14)[5] which decided issues arising both under this directive, and under the directive on the right to information. Regarding this directive, it held that the directive does not preclude national legislation which does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings. In that particular case, the German law required the objection to be written in German, although the person concerned spoke only Romanian. However, things would be different if the competent authorities considered that, in the light of the proceedings concerned and the circumstances of the case, such an objection constituted an essential document.

Decisions on essential documents

The usual rule is that the relevant competent authority, depending on the stage of the case, makes the decision, either at the request of the suspect/defendant or his/her lawyer or *ex officio* (other than when the law lays down which documents are to be translated anyway), and it includes generally documents

5 http://curia.europa.eu/juris/document/document.jsf?text=&docid=169826&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=262098

relating to the right to appeal. There is sometimes no formal right to appeal, particularly against a court decision, but there are usually ways to take the matter further.

Bulgaria and Luxembourg offer contrasting pictures. During the implementation phase, an idea was proposed in Bulgaria that explicit requests from the defence to have documents translated should be binding on the competent authorities i.e. the defence should be able to define what it considers relevant. But this was rejected, and so the discretion lies with the authorities alone. Luxembourg, on the other hand, reports as a matter of practice that if the lawyer asks for translation of the whole file, the public prosecutor, mindful of resources, asks the lawyer to indicate those considered important – and in nearly all cases they are all translated.

Reference should be made here to *Qualetra*[6], an EU-funded project, aimed at improving the standards of legal translation in a number of ways. Part of its focus was on the essential documents referred to in the directive, and it produced a package of measures, as follows:

- a multilingual term base for legal translators and legal practitioners
- translation memories
- multilingual templates of the European Arrest Warrant, including the most frequent archetypical phraseologies
- recurrent phraseologies of the essential documents
- facsimile examples of three types of essential documents (that can be used by translators to help them understand the structure and layout, the content, and the phraseology of these documents)
- a corpus of essential documents

In the context of the European Arrest Warrant related research, a specific training course on translating the European Arrest Warrant has been developed.

Partial translations

Some Member States allow for partial translation, meaning only the parts of a document essential for the exercise of the right to defence (for instance, Austria, Bulgaria, France, Greece, Ireland, Latvia, Malta, Netherlands, Poland, Slovakia, Spain, Sweden, England and Wales, and Scotland). Others do not permit it (Czech Republic, Estonia, Lithuania, Luxembourg).

The competent authorities make the decision at the stage of the proceedings themselves, usually also allowing the defendant to request it.

There is usually a right to challenge the decision, too.

Challenges to decisions on translations

There is generally the right to challenge the decision, in different ways depending on at what stage in the proceedings the decision is made.

[6] http://www.eulita.eu/qualetra-0

Exceptions include:

- Estonia, Italy and Lithuania - there is no right to challenge decisions regarding translation during a trial other than to include the issue in an appeal against the judgement
- Hungary - there is no right to challenge a decision on which documents are essential, and which documents are partially translated
- Spain - when the decision is taken by the police or public prosecutor, there is no possibility to challenge their decisions. The only way to do so would be indirectly, through a *habeas corpus* motion.

Oral translations or summaries of essential documents

Practice varies widely in this field. The main variations of when this is possible are listed below:

- Austria, Croatia - only if the suspect has a lawyer
- Cyprus, Estonia, Slovakia, England and Wales - only if the translation does not affect the fairness of the proceedings
- Czech Republic, Estonia, Latvia - only of documents not listed in the legislation as essential
- Finland - only in the preliminary stages
- France – only in exceptional cases, when such decisions have to be officially communicated or notified
- Malta - when a document is presented during a witness testimony
- Portugal - only when the defence requests it
- Spain – when a translator is not available in time

In Slovenia, oral translations or summaries are not provided for in the law.

However, there are dangers in oral translations. Austria reports that there have been cases where documents have been translated orally for hours, so that the suspect had no possibility to understand or to remember every detail required for the defence.

Ireland reports that oral translation is by far the most prevalent practice: that means that defence lawyers themselves become reliant on oral translation (and on top of that are not able to have their own correspondence and advice to their client translated into written form).

In the Netherlands, if the judgement has been translated orally in the presence of the defendant, the defendant loses the right to request afterwards a written translation.

EULITA finds that, because of authorities' wish to save costs, the exception granted under the directive for oral translation has become more of a rule than an exception. They recommend that Member States should work towards more standardisation of essential documents (decision depriving a person of liberty,

charges and/or indictments, and judgments) so that standard forms, or at least text modules, could be used more frequently, which would reduce costs and save time.

In addition, EULITA states that interpreters should not be required to summarise essential documents when asked to give an oral translation. The decision on which passages are to be omitted is beyond an interpreter's responsibility.

Waiver of the right to translation

Once again, the practice has wide variations, as follows:

- No waiver: Estonia, Latvia, Lithuania, Poland, Sweden
- No waiver foreseen in the law (but may in practice occur): Belgium, Italy, Netherlands
- Waiver allowed: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Malta, Portugal, Slovakia, Spain, England and Wales, Scotland

In Member States where waiver is permitted, it is always subject to conditions, such as only once the defendant has received full information about rights, or in the presence of a lawyer or following advice from a lawyer, or if it is clear that the defendant speaks the local language adequately. The decision is often recorded in writing.

Ireland provides an interesting insight into defence tactics in the light of delays caused by translation of documents: especially in less serious cases, defence lawyers may wish to deal with the case through the local language on the basis that they will have a quicker and more expeditious hearing, thus avoiding a potential remand in custody while translation is arranged. The respondent points out that this leads to a situation where defendants have no real understanding of the proceedings being brought against them or the reason for the outcome.

As for whether the waiver, once given, can be revoked, again practice varies:

- No provision re revocation of waiver – Austria (but may request translation of new documents which have arisen after the waiver), Cyprus, Czech Republic, Finland (but the defendant has the right to later interpretation or translation in other proceedings), Portugal, England and Wales (but the court can exclude evidence if there is doubt about the reliability of the waiver), Scotland (but the court would probably allow translation subsequently if it decided that it was necessary for a fair trial)
- Revocation allowed - Bulgaria (there is no express provision, but it is allowed), Luxembourg, Malta, Slovakia (the defendant may request a translation of a document at a later stage of the proceedings)

Poland points out that a defence lawyer may communicate with the client directly without an interpreter if he or she speaks the client's language, but may not be an official translator in the proceedings.

Theme 3 – quality of interpretation and translation

Interpretation and translation (as outlined in the previous themes) shall be 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.

Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required.

In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

General

Quality raised some of the liveliest comments from respondents.

The general background is given by EULITA. The often time-consuming and cumbersome task of contacting several people qualified for the specific required language combinations required for a case often leads to delays and is an obvious administrative burden. As a result, and particularly with the wish to save costs, there is now a trend in several Member States to outsource the recruitment of interpreters to outside agencies.

However, EULITA says that experience in several countries indicates that contracts with agencies frequently lack transparency as to the qualifications of the people signed up for interpreting, as well as to the payment charged for administrative services and the fees ultimately paid to legal interpreters. EULITA does not believe that this trend contributes to improvements in the quality of interpreting, and occasionally compromises the fairness of proceedings.

For instance, measures such as categorising interpreters according to their qualifications, under the rationale that interpreters need not have top qualifications for certain types of hearings, often results in the lowest-tier interpreters being assigned to all court cases, including the most complicated ones.

On this specific point, England and Wales, one of the outsourcing jurisdictions, fills in the background with local experience. It reports that there have been serious concerns about the quality of interpretation services in England and Wales since the Ministry of Justice signed a four-year Framework Agreement for the provision of interpreting and translating services to the Courts and Tribunals Service with Applied Language Solutions (ALS) (now Capita Translating and Interpreting) in August 2011. In 2013, the House of Commons Justice Committee found that "from 30th January 2012 when ALS subsequently began delivering interpreting and translation services to HM Courts and Tribunals Service it faced immediate operational difficulties. ALS and more recently Capita have been unable to recruit qualified and experienced interpreters in sufficient numbers, leading to an inadequate volume and quality of interpreting services being available to courts and tribunals. This has resulted in numerous hearings being adjourned or severely delayed and, in criminal cases, unnecessary remands into custody, with potential implications for the interests of justice".

Ireland reports that the police select the translators for police stations. It is economically driven through a national contract, with no input from defence lawyers regarding, say, quality. The defence does not have the right to bring to a police station a private translator who is publicly funded. (It is different if the client can afford an interpreter out of their own funds.) Interpreters routinely volunteer their services for

languages in which they are not expert. A Russian speaker might, for instance, indicate that they can satisfactorily interpret for Lithuanians, Latvians and Estonians.

Many Member States have approved systems for finding interpreters or translators, through lists, registration, a procedure for authorisation or 'swearing in' of those who are qualified, and sometimes even demanding previous experience in public service interpreting (in England and Wales, 400 hours, for instance). A minority of Member States report no system for quality - Bulgaria, Finland, Greece, Italy, Lithuania and Poland. EULITA's FIT project, which aims to set up a database of legal interpreters and translators on the European Commission's e-justice portal, will make a major contribution to treating the issue as an EU-wide one, with the possibility eventually of EU-wide standards on quality.

Is the quality sufficient to safeguard the fairness of the proceedings?

There were many comments regarding quality, worth recording because they give an insight into quality on the ground.

EULITA points out that, despite the kind of quality systems mentioned above, the urgency to find an interpreter "without delay" results in any person being called upon who is believed or claims to speak the required foreign language. This may be a police officer at the same or other police stations, clerical staff at court, friends or neighbours. As the result of a first examination can have a decisive impact on the future criminal proceedings, the quality of the interpreting services at this examination is crucial, and should not be compromised by calling upon unqualified and sometimes even biased people.

Austria confirms this state of affairs. It has approved systems which are run by the Ministry of Justice for the courts, and the Ministry of Interior for the police. But the problem is that any other 'suitable person' may be appointed if someone is not readily available through the approved route. This happens very often at police stations, with the respondent being aware of cases where a gas station attendant or firefighter, or (very dangerously) somebody from the family of the victim, or indeed any other person somehow speaking the language of the suspect, was called upon to interpret.

As mentioned before, others report concerns that there is not sufficient knowledge among the interpreters used of specifically legal terminology (Bulgaria, Czech Republic, Hungary, Lithuania) or criminal slang.

Bulgaria says that there are no criteria for quality – qualifications, experience, regular reviews.

Greece and Sweden point out that quality depends on the language used – in other words, there is more likely to be a higher quality in the more common languages, but much less likely with those languages little used in the country. That may be a problem in both those countries with the influx of refugees and migrants from countries whose languages are little known outside.

It would not be right to paint a consistently bleak picture of quality. A number of respondents report no problem with quality. There has been research in Poland into quality, which showed the majority of those polled were content with the service, more expressing satisfaction with the outcome from a foreign language into Polish, and fewer with the reverse position[7]. Nevertheless, it can be seen that the pressures of speed, resources, migration and the popularity of a language come together to highlight serious concern about the impact of quality on the fairness of the proceedings.

[7] A. Mendel, Raport z badania ankietowego na temat jakości tłumaczenia w postępowaniu karnym, 2011, http://www.tepis.org.pl/pdf-doc/home//r-jtpk.pdf, pp. 15 - 16

Concrete measures taken to ensure quality

The measures taken to ensure quality, as with everything else, vary widely:

- an exam (Austria, Croatia, Slovenia)
- an exam plus experience (Scotland)
- Ministry list or vetting (France, Slovakia, England and Wales)
- sworn translators (Belgium, Netherlands, Poland)
- authorisation (Sweden)
- a basic certificate (Bulgaria, Cyprus)

These criteria, minimum though they are, are often not applied when rare languages are required, for obvious reasons.

The following reported no quality measures at all - Czech Republic, Estonia, Finland, Greece, Italy, Lithuania and Spain.

Poland reported that there were national recommendations to improve the quality of interpreters and translators. These recommendations are of interest Europe-wide:

- to raise the current wages of listed interpreters and translators (since low wages discourage well-qualified interpreters and translators from putting themselves on the list);

- to improve relations between interpreters and translators and other criminal justice stakeholders (not only those involved in prosecution and administration but also with witnesses, victims and suspects/accused, so that all understand better the specificity of interpreters' and translators' work);

- to ensure interpreters and translators have basic information concerning the case before in hand before the beginning of the interpretation or translation; to give the earliest possibility to interpreters to read the files of a case before the interpretation begins, or even to have contact with people whose testimony, explanations or opinions will be interpreted in the proceedings;

- to improve the technical conditions of interpretation during the proceedings (for instance, improving the acoustics of court rooms);

- to record criminal proceedings (for instance, the hearing of witnesses or examinations of suspects or accused), to ensure the ability to make an impartial evaluation of the quality of interpretation or translation through analysis of the recorded material;

- to observe the work of interpreters or translators for the purposes of quality control;

- to provide training for interpreters and translators regarding various aspects of law and procedure (terminology, principles, institutions, and so on);

- to provide training for interpreters and translators in their foreign languages (including legal, economic and technical aspects), and in particular for rare foreign languages;

- to provide training for criminal justice officials to improve their foreign language skills;

- to improve the quality of documents handed over for interpretation or translation;

- to keep the lists of interpreters and translators properly updated, which is very important where prompt and urgent interpretation or translation is necessary;

- to establish a body of experts at the Ministry of Justice in order to prepare a glossary including recommendations of translations of the names of institutions, titles of the most frequently used legislation, and legal concepts, in the foreign languages most used in proceedings, such glossary to be available on the website of the Ministry of Justice and of associations of interpreters and translators;

- to ensure interpreters and translators are aware of the ethical principles of their profession.

Poland also pointed out that there is no distinction made in national legislation between interpreters and translators, and that candidates need to pass an examination in both branches of the profession in order to obtain a place in the list.

Registers of independent interpreters and translators

Five Member States reported that they had no such registers**:** Hungary, Italy, Latvia, Lithuania (for independent legal interpreters and translators) and Portugal. Spain reported that the implementing law envisaged the creation of an official register, but it had not yet been developed.

Two further Member States reported that they had such registers, but that they were not accessible to lawyers: Belgium and Cyprus.

The others all had a register which was accessible to lawyers, but with significant variations:

- Bulgaria's lists cover only 13 out of 28 regional courts

- Finland has no official register, but only one published by the Finnish Association of Translators and Interpreters

- Greece has no register but the names of independent interpreters and translators are published every year in the Government Gazette

- Poland has a list of sworn interpreters and translators, but not a list of others who might be used in urgent cases

- Scotland has no independent register but the Scottish Legal Aid Board has a list which comes without official endorsement

EULITA recommends that there should be legislation on national or regional registers of legal interpreters and legal translators, along with detailed admission requirements. They would like EU member states to be encouraged to establish, or further develop (if they already have one), their registers of legal interpreters/translators, and to promote their dissemination to all judicial stakeholders and the general public.

EULITA's EU-funded project, LIT Search[8], is an initiative to link up all existing registers in the EU on the European Commission's e-justice portal, so that legal interpreters and translators can be researched by anyone in their own language, in the same way as there exist Find-A-Lawyer and Find-A-Notary searches on the same site.

[8] http://www.eulita.eu/lit-search-%E2%80%93-pilot-project-eu-database-legal-interpreters-and-translators

Theme 4 – record keeping

Member States shall ensure that when:

(a) a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter

(b) when an oral translation or oral summary of essential documents has been provided in the presence of such an authority, or

(c) when a person has waived the right to translation
it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.

The majority of respondents keep records of all three of the instances mentioned in the directive. (Some respondents misunderstood the use of the word 'recording' as meaning 'recording through the use of audio or video equipment', which was not what was intended.)

Only Luxembourg said that no records were kept of any of the three instances. Netherlands said that there was no record-keeping regarding the use of oral translations or oral summaries, or the waiver of the right to translation. Slovenia keeps no records of oral translations or oral summaries, but stated that in practice written translations of the essential documents are in any case provided. France said that there is no provision regarding record-keeping for oral translations or summaries, but that it should happen in practice.

Waiver of the right to translation is not allowed in Estonia, Latvia, Lithuania, Poland and Sweden, and so record-keeping does not come into question.

Theme 5 – costs of interpretation and translation

Member States shall meet the costs of interpretation and translation resulting from the application of the rights to interpretation and translation, irrespective of the outcome of the proceedings.

Are all costs met?

Although in principle all costs are met, there are wide variations across the Member States as to what 'all costs' means, with some examples as follows:

- Austria – the defendant has to pay those costs which exceed the legal minimum requirement, if both requested by him/her and if the defendant is convicted

- Czech Republic - the costs are met by the suspect/defendant for those activities which do not take place before the law enforcement authorities, such as preparations for questioning, if the defendant has chosen his or her own lawyer

- Finland - the costs are met insofar as the translations are deemed necessary e.g. translations at the request of the suspect/defendant or his/her law risk not being reimbursed

- Greece – the costs are not met if, exceptionally, the suspect/defendant can demonstrably pay them, or in practice for communications not before the law enforcement authorities e.g. communication with the lawyer or preparation of the defence)

- Hungary and Lithuania - only the costs of official interpretation and translation are met

- Ireland - in legal aid cases, in practice the cost will be met only for what the court certifies, and this does not always include written documents and might limit the number of consultations

- Italy – the costs are recovered if the defendant is found guilty

- Luxembourg – the costs are met if undertaken by an authority

- Malta – services ordered by the court are borne by the state

- Netherlands – the costs are not met for communications between lawyer and client if the client is not on legal aid

- Poland - on conviction, unnecessary costs may have to be paid by the defendant

- Sweden – it is not certain whether costs for written translations provided by the lawyer will be met

EULITA points out that the directive's requirement that Member States shall meet the costs of interpretation and translation has led to a general trend to reduce the fees paid to legal interpreters and translators, or not to grant fee increases based on cost-of-living indices, by stating general budgetary constraints. In several countries the time expiring before legal interpreters/translators receive their fees has become even longer (e.g. up to several years).

Are the costs met directly or indirectly?

The costs are met directly in the following Member States: Belgium, Bulgaria, Croatia, Cyprus, Estonia, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Slovakia, Slovenia, Spain, England and Wales, Scotland

Where the costs are met indirectly, these are the variations:

- Austria - depends on the type of interpreter (whether a freelancer or member of the *Justizbetreuungsagentur*), since the fees are sometimes paid by the institution appointing the interpreter

- Czech Republic – an *ex officio* lawyer who instructs an interpreter for work outside the police station or court has to pay the costs directly out of his or her own pocket, and be reimbursed later

- Finland - if counsel has arranged the interpreter directly, the costs have be paid by the lawyer for later re-imbursement (but translations done this way or by the suspect/defendant run a great risk that their costs will not be met

- Luxembourg - in legal aid cases, the lawyer must submit the bill to the Bar first for approval, but the lawyer can ask for an advance payment where the costs are high

- Sweden - the lawyers´ costs for the use of interpretation during consultations between the lawyer and the client are met indirectly through a recovery procedure.

General questions

Has the directive brought important changes on the right to interpretation and translation in criminal proceedings in the legislation and practice of your Member State?

The following member states report that substantive changes had been introduced as a result of implementation of the directive – Austria, Bulgaria, Estonia, France, Greece, Italy, Latvia, Poland, Slovakia, Slovenia, Spain, Sweden, Netherlands, UK-England and Wales, UK-Scotland.

The following said that there have been no changes introduced – Croatia, Hungary, Ireland, Lithuania, Portugal. The following said that slight changes have been introduced – Cyprus, Czech Republic, Malta. The directive has not yet been implemented in the following Member States – Belgium, Luxembourg

Examples of aspects which have changed:

- Austria - the major improvement is that interpretation and translation now has to be provided free of charge. Even though the previous case law required interpretation for suspects unable to understand or to speak the language, the cost had to be borne by the suspect or accused if convicted. Moreover, there were no provisions as regards the translation of essential documents.

- Czech Republic - it is now specified that all interpretation and translation rights belong not just to the accused but also to the suspect.

- France - the main change is the right to interpretation during interviews with the lawyer.

- Spain – the directive introduced a right to translation (but in practice there are insufficient interpreters and translators, and a lack of enforceability of translation as regards of important documents of the procedure).

What are the main aspects that could be improved, both at EU and national level?

A number of common elements emerged from the many suggestions received, but the largest number focused on quality.

EU level

Quality

It is obvious that defence lawyers do not believe that the quality of interpreters and translators is sufficiently high. Here is a sample of comments received, with some conclusions drawn below. The recommendations mingle national with EU recommendations, and are kept together because they in general apply to both levels:

- Bulgaria – the national Ordinance sets some vague principles for accuracy and completeness of the translation, a single requirement for Certificate of level of command C 1 or C 2 according to the Common European Language Frame and introduces no requirements for specific qualification in legal terminology, previous experience and periodical attestation. The Ordinance does not provide adequate procedures for control of the work of translators and interpreters, for

assessment of their level of competence and for exclusion from the list of interpreters and translators in case of breach of the law and the duties of the expert.

- Cyprus - national legislation should be amended and provide for an official list drafted by the Supreme Court with the names of the interpreters and their qualifications so that the suspect or the accused and his/her lawyer can evaluate the credentials of the interpreters and the quality of their work. This will safeguard the independence of the interpreter's selection process.

- Czech Republic –

    a. A new act on interpreters should set up a system with elaborated criteria for registration of interpreters, quality checks and appropriate sanction mechanisms.

    b. Challenging the quality of interpretation, including legal remedies, is not specifically enacted in the national legislation.

    c. The link to the establishment of a system of audio recording of questionings or hearings to prove the quality of interpretation, if contested, should be also explored.

- Estonia - much needs to be done to ensure the interpretation/translation is of sufficient quality.

- Greece - it would be advisable to work with the respective embassies, in order to enrich the registers of interpreters and translators. Moreover, strict criteria, possibly even exams for someone's entrance in the registers, should be set. As a further improvement, independent translation centres (with EU funding as well) could be established, in order to recruit interpreters and translators for languages not particularly well known, especially in view of the great immigration problem that Europe is facing. Given the large numbers of immigrants crossing the borders daily, the possibility of their committing various offences is high.

- Ireland - the concern is that this is being paid " lip service" only and that the translation provided is the bare minimum both in terms of oral translation only and in terms of choice of translator and quality of translator.

- Italy - the quality of interpreters and translators must be improved by a previous selection and training.

- Lithuania – in order to ensure the quality of the interpretation/translation, only independent translators/interpreters with special education and preparation should be able to render such services; therefore, the need to establish a special legal register should be made obligatory in the directive.

- Malta – there should be periodic proficiency tests in order to be retained on the list of interpreters and translators.

- Poland - regarding quality of interpretation and translation, the following have been proposed:

a. to raise the current wages of sworn interpreters and translators (nowadays, low wages limit accessibility to professional sworn interpreters or translators, and causes professional interpreters or translators to lack interest in becoming sworn interpreters or translators);

b. improving relations, cooperation and communication of interpreters and translators with other stakeholders in criminal proceedings – not only with representatives of investigation or criminal justice administration, but also with witnesses, victims and suspects/accused (the stakeholders of criminal proceedings understand better the specificity of interpreters' or translators' work);

c. for investigation or criminal justice officials to provide interpreters and translators with basic information concerning the actual criminal case, before the beginning of the interpretation or translation;

d. one of the most important elements to improve quality of interpretation in criminal proceedings will be effected by the earliest possible reading by an interpreter of the files of a criminal case before the interpretation, or even by earlier contact with the persons whose testimonies, explanations or opinions will be interpreted in criminal proceedings;

e. to improve the technical conditions of the interpretation or translation service during criminal proceedings (for instance, the acoustic of court chambers);

f. to record activities of criminal proceedings (for instance, hearing of witnesses or examinations of suspects or accused) – this could ensure an impartial control and evaluation of the quality of interpretation or translation by analysis of the recorded material;

g. observation of the work of interpreters or translators (such observations should be made by officials of investigation and criminal justice bodies);

h. provision of training for interpreters and translators concerning various aspects of criminal law and criminal proceedings as well as their specificities (terminology, principles, institutions and so on);

i. provision of training for interpreters and translators in the field of professional foreign languages (including legal, economic and technical aspects of specialisation). In particular, there is a need to provide training in the field of rare foreign languages;

j. provision of training for investigation and criminal justice officials to improve their foreign language skills and competences;

k. in the context of professional training for interpreters, translators or investigation or criminal justice practitioners – to develop offers of specialist training in the field of domestic and foreign substantive criminal law and criminal proceedings, or in the field of interpretation and translation techniques for purposes of investigation and criminal justice administration, as well as cooperation with officials of the administration. Such training could be offered also in a form of e-learning programmes, financed or co-financed from public sources;

l. to introduce a difference between interpreters and translators. (It is remarkable that in the whole Polish legal system, there is no formal terminological distinction between interpretation and translation, and between interpreters and translators in the context of

criminal proceedings or other legal proceedings). There is no formal classification of interpreters and translators, and every person who wants to become a sworn translator must pass the state exam in two parts – translation and interpretation;

m. introduction of a requirement to list the specialisations of interpreters (translators) on the official list of sworn translators - for example, criminal law, civil law, medical law, commercial law and so on;

n. to improve the technical quality of documents and other texts in criminal proceedings which have to be interpreted or translated (in the experience of interpreters and translators, many documents handed over to them are illegible or sloppy). Sometimes the material should be interpreted or translated not by a single interpreter or translator but rather by a group (two or more);

o. to update personal and contact data of those listed as sworn translators (such data are very important, especially in case of urgent work);

p. to establish a body of experts within the Ministry of Justice, in order to prepare a glossary including recommendations concerning interpretation and translation of the names of institutions, titles of the most frequent legislation and legal concepts in the most frequent foreign languages appearing in the context of criminal proceedings. Such glossary should be available on the webpage of the Ministry of Justice and webpages of associations of interpreters and translators;

q. developing the knowledge of interpreters and translators about the ethical principles of their profession.

- Portugal –

  a. both interpreters and translators should have legal qualifications

  b. the Member States should promote and maintain a Register of Certified Legal Translators and Interpreters

- Spain – adequate human and material resources are needed in order to guarantee translation of relevant documents, and to ensure interpreter assistance to the lawyer during the criminal proceedings

- Sweden - in order to ensure a high quality of the interpretation and translation services it is important to increase the number of qualified interpreters and translators.

- EULITA - there should be legislation on the requirement for national or regional registers of legal interpreters and legal translators, along with detailed admission requirements. EU member states should be encouraged to establish, or further develop (if they already have one), their registers of legal interpreters/translators, and to promote their dissemination to all judicial stakeholders and the general public.

It is clear from the replies that there are some common themes, for national and EU-level legislation:

- a register of interpreters and translators

- a recognised specialism in legal interpretation and translation

- training and monitoring of interpreters and translators

Communication between suspect or accused and lawyer

The next highest number of comments concentrated on problems with interpretation or translation between the suspect or accused and the lawyer, as follows:

- Czech Republic - the interpretation of communications between the suspect or accused and the defence lawyer should be improved. The interpretation of the respective provision of the directive should be clarified at the EU level, since the wording of the national implementing legislation does not seem to be in full compliance with the directive.

- Lithuania - obligatory provisions should be incorporated in the directive with regard to providing the suspect or accused with interpretation while he or she is communicating or consulting with the lawyer from a place of custody, from remand or from prison, at the police station or the court (where the communication relates to the ongoing pre-trial investigation and/or court hearing).

- Luxembourg – it would be good practice if it was impossible for an interpreter or translator who has worked for the investigative authorities to work at the same time for the defence, and vice versa.

- Slovakia – There is a possible lack in regulation of the interpretation of the consultation between the defence lawyer and the accused person e.g. in jail.

Essential documents

- Bulgaria - this idea was not accepted during the discussions when the directive was being implemented nationally, but should have been. Explicit requests in writing of the accused or their lawyer to have documents translated should imperatively bind the deciding bodies, because these documents are essential *per se* (e. g. documents relating to the right to appeal, various pieces of written evidence, etc.). The idea was to restrict the power of the deciding bodies to make an assessment of their own in all cases.

- Czech Republic – there should be a right to translation, at least oral, of other documents than those which are enumerated as documents that need to be translated obligatorily. The implementing provision is, however, rather vague and leaves a broad discretion to the authorities.

- Finland – there should be stricter legislation on what documents would be deemed as necessary to translate, since now, especially at the pre-trial investigation stage, it is left totally to the discretion of the head of investigation, and no effective remedy exists to challenge the decision.

Professional secrecy of interpreters

- Belgium - the directive should stipulate that “the Member States shall ensure that the translator interpreting the communication between the suspect and his/her lawyer, is held to a strict professional secrecy toward the investigative and judicial authorities” or something like this, to

ensure the strict and effective confidentiality of the communication between lawyer and suspect who does not speak the same language.

Link between interpreter and paymaster

- France - one of the main risks is the commercial link of dependence between the interpreter and the paymaster, broadly conceived as the Ministry of Justice. Interpreters often have the tendency to adopt a favourable approach towards the person or the body that appoints him or her (police, prosecutor, judge). To cut such a link, there should be the possibility of waiving the services of an interpreter on the grounds of him or her being too frequently appointed by the police or prosecutor, and this should lead to a replacement, with the aim of an independent and impartial translation.

Position of the accused in court

- Austria – it would be a very good practice in court hearings if everything that is taking place could be constantly interpreted into the ears of the suspect (by a whispering interpreter). This is the only way to really provide the suspect with the possibility of actively engaging in the proceedings (e.g. to interrogate witnesses).

Victims

- Poland - Polish doctrine emphasises another aspect of the right to interpretation or translation – the asymmetry between the positions of suspects or accused and victims in criminal proceedings, in the area of the assistance of interpreters or translators. The general position is that suspects and accused and victims should have the same guarantees in criminal proceedings - the equal right to access to free assistance of an interpreter or a translator in a criminal case.

National level

Remedies

- Cyprus - What could be improved at national level is the way the right to challenge the decision of the competent authority is exercised. According to the law, the suspect or the accused can make an oral complaint to the competent authority, and the competent authority decides on the objection, recording in the minutes of the procedure both the oral objection and its own reasoned decision on the objection. There should be an amendment to the law, so that the reasoned decision of the competent authority is made subject to judicial review.

- England and Wales - breaches by parties to the proceedings, such as where the Crown Prosecution Service fails to translate essential documents in its case against the defendant in good time before trial, can only be dealt with by: staying the case and claiming an abuse of process (highly unlikely); excluding the untranslated evidence; adjourning the trial; or exceptionally, making an order for wasted costs against the defaulting party.

Other

- Cyprus –

    a) currently there is no provision in the legislation for a right to revoke the waiver. This is a problem and the law should be amended to include a clear right to revoke the waiver for whatever reason, and at the time the suspect or the accused wants to exercise it.

    b) to comply with the provisions of the directive, national legislation should be amended and provide for an official list of interpreters drafted by the Supreme Court, with the names of the interpreters and their qualifications so that the suspect or the accused and his or her lawyer can evaluate the credentials of the interpreters and the quality of their work. This will safeguard the independence of the interpreter's selection process.

- Greece - at national level, there should be more punctual and better information for the accused about the charge and the material gathered by the authorities, and the presence of an interpreter during communications with a lawyer should be facilitated. Also, defendants should be allowed to give evidence, at least in the preliminary proceedings, in writing, in a language they understand, to ensure that they understand the content of their testimony.

- Netherlands –

    a) in the directive, the right to translation can be waived only when the suspect or the accused had prior legal advice (or had otherwise been informed about the consequences of the waiver and the waiver has been given unequivocally). The directive requires that the waiver is registered by the national authorities. This has not been transposed into national law.

    b) due to an omission in the legislative process, the rulings of the Supreme Court do not fall within the scope of the national provisions of the 'translation of the most important decisions of the sentence or ruling'. This is not in keeping with the directive on the basis of which the right to interpretation and translation is also applicable in possible appeal proceedings.

    c) the national situation does not include a right to the presence of a lawyer during the police interrogation. Police interrogations are only recorded orally or visually in exceptional cases. The recording of the interrogation is carried out by the police in the report of the interrogation. At the end of the interrogation, the Dutch version of the interrogation report will be read to suspects through an interpreter, after which the signing by the suspect of his or her statement will take place. The suspect's signing of the report has an important evidential value. The suspect cannot determine whether the interpreter correctly translated the report as drawn up by the police, which carries the risk of signing for the correctness of the statement while the report contains inaccuracies. The suspect will find out only when discussing the report with the lawyer - much later. For lack of tapes, it cannot later be determined whether the translation was incorrect or whether the suspect altered the statement at a later phase of the proceedings.

- England and Wales - the difficulty is that the directive has been implemented by way of amendment to the Codes of Practice issued under the Police and Criminal Evidence Act 1984, rather than by legislation. The Codes of Practice are not statutory instruments, and the Notes for Guidance which assist in clarifying some of the amendments brought about by implementation of the directive have an even lesser status. Failure to comply with any provision of a Code does not of itself render the individual concerned liable to criminal or civil proceedings. Remedies for breaches of the Codes of Practice lie by way of complaint to the Independent Police Complaints Commission and, more importantly, may result in the inadmissibility of evidence obtained in breach of the Code in subsequent criminal proceedings.

Good practices

A wide range of good practices has been discovered, recommended for more widespread use among the Member States, as follows:

Appropriate change of interpreter

- Scotland - the language, dialect, name, designation and qualifications of the interpreter used at the police stage and at the investigative stage are noted, so that, so far as possible, the same interpreter is not used in the court proceedings (although it is recognised that it may not always be possible to secure the services of a different interpreter who has appropriate qualifications and experience given the limited time available).

Confidentiality

- Bulgaria - there is a rule: a witness shall not be interrogated about circumstances that he or she became aware of in the capacity of an interpreter during communications between the accused and lawyer.

- Belgium – according to court precedents, an interpreter is held to an obligation of professional secrecy, breach of which can amount to a crime.

Evidence of language needs

- Ireland - the fact that police interviews are audio-visually recorded, and now are conducted in the presence of a lawyer, means that there will at least be objective evidence to review as to whether or not a translator ought to have been supplied.

- England and Wales - there is guidance in the Codes of Practice for determining whether a person needs an interpreter at the police station. This guidance suggests that a telephone interpreter service is used, or cue cards or other visual aids are used to determine a person's ability to speak and understand English. The provision of such materials and assistance is a matter for individual police forces.

Scope of directive

- Bulgaria – there is a good practice in some courts regarding administrative sanctions imposed by an authority other than a court (for instance, sanctions imposed in connection with minor traffic offences). Some courts (Plovdiv, Balchik, Yambol), relying on the principle that the level of protection shall never go below the standards set forth by the European Convention on Human

Rights and the European Charter of Fundamental Rights, have firmly held that offenders who did not understand the language of proceedings should have had interpretation and translation provided for them not only before the court of appeal, which is the standard under Article 1.3 of the Directive, but in the course of the entire administrative procedure resulting in imposing the administrative sanction before appealing this sanction before a court. These courts, making their decisions on the grounds of the above principle and acting as courts of appeal, have constantly quashed the administrative sanctions that had been imposed with no interpretation or translation having been provided in the entire course of administrative proceedings.

Complaints against the police

- Cyprus - in 2006, the Independent Authority for the Investigation of Allegations and Complaints Against the Police (IAIACAP) was created. The IAIACAP issues an Annual Report which records its work during the year. In their latest report (Annual Report 2013), they suggest an amendment to the current law, so that the accused has the right to communicate with the IAIACAP. This will add an important safeguard to the rights guaranteed by the legislation and by the Interpretation and Translation during the Criminal Proceedings Law of 2014. The establishment of the IAIACAP is good practice because, even though we have more or less the legal framework demanded by the European Union, in reality there are problems in complying with the law. Furthermore, an inclusion of the right to communicate with the IAIACAP, and also its expansion to include permanent criminal investigators, translators, photographers and other personnel, will increase the confidence of the public that the police are under constant scrutiny and comply with all the provisions of the law.

Consequences of breach of directive

- Estonia - the rule that if an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, the act is null and void, works well as a guarantee that the right to interpretation is respected.

Quality measures

- Estonia – the introduction of sworn translators as a regulated profession has been welcome.

- Poland – there is a ‘Code of a Sworn Translator’, which includes tips on competent and ethical delivery of interpretation and translation services. (Unfortunately, they do not cover the interpreters or translators who are not sworn translators.) Among its provisions:

    a. interpreters or translators should always have trouble-free and assisted contacts with authorities responsible for investigation, preparatory and judicial proceedings as well as with suspects or accused persons and with their lawyers

    b. they should have quick access to the files of the criminal proceedings and to all people and additional materials helpful during the preparation of an accurate and a good-quality interpretation or translation

    c. they should be personally responsible for the quality of an interpretation or a translation delivered

d. they should be obliged to develop their language competences and specialisations

e. they are obliged to maintain confidentiality

- Sweden - there is a practice of sending a copy of the indictment to the assigned interpreter prior to the court hearing. This could be improved by including also other essential documents.

- Sweden - there is a practice of noting any need for interpretation or translation on the indictment submitted to court, enabling a prompt assignment of an interpreter to the trial.

- Sweden - during lengthy trials, the accused is often assisted by more than one interpreter.

Cases involving minors

- Sweden - in cases involving a minor, his or her custodians are, if needed and upon request, often provided with interpretation during the trial.

Emergency access to interpreters

- Netherlands - all police stations and detention centres have an interpreter telephone at their disposal. This is implemented by placing a telephone in each interrogation room. By picking up the phone, a direct connection is made with an interpreter agency. In case of emergency, such as directly after the arrest of a suspect, this is a good alternative for the physical presence of an interpreter.

Co-ordination of services

- Scotland - collaborative working across the criminal justice system is key to ensuring there is a coordinated approach to the provision of interpreting and translation services at all stages of criminal proceedings.

Timetable for provision of translated documents

- Scotland - as part of the Code of Practice, there are agreed timescales for the provision of translated documents to the accused (from 3 to 14 working days).

V - Right to information

General

Overall, there is a considerable gap between the words of the law and the practice on the ground. Various examples of this are given below. Ingrained practice, but more often deliberate police tactics, lie behind failures to implement the directive as intended. In addition, there are still gaps in the implementation at national level.

Theme 1 – right to information on procedural rights

General

This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.

(i) Not deprived of liberty

Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

(a) the right of access to a lawyer;

(b) any entitlement to free legal advice and the conditions for obtaining such advice;

(c) the right to be informed of the accusation;

(d) the right to interpretation and translation;

(e) the right to remain silent.

Member States shall ensure that this information shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

Information on procedural rights

In most Member States, no problem is reported with this right in general. It has not yet been implemented in Belgium and Bulgaria on the grounds that the existing law covered the directive's requirements (but this claim is disputed by the Bulgarian respondent). Nor has it been implemented in Luxembourg.

Yet there are gaps. For instance, not all the rights are included in the information given in all Member States. So, the following information rights are missing in the following Member States:

- Cyprus – on the right to a lawyer, and on the right to legal aid
- Ireland – on the right to silence
- Italy and Portugal – on the right to interpretation and translation
- Luxembourg – on the right to legal aid

Yet the following interesting examples from a wide number of Member States on how the right works in practice might throw light on working practices in other jurisdictions as well:

- The Czech Republic, in a response which must find an echo elsewhere, reports that some policemen and judges speak rather quickly, and the oral version of the rights merely summarises the basic rights. The written information, however, which forms part of the record, is very long and detailed, and covers not only the directive's rights but also other defence rights. However, this written information is still drafted in a way unchanged by the introduction of the Directive: in small letters, in italics and copying the formal wording of the provisions of the criminal code, so making it difficult for an ordinary person to understand.

- Finland again reports that usually the information is provided only moments prior to starting the interrogation. This timing is significant, since the suspect may in such a short time not fully understand the rights. (If the suspect is called to the interrogation by letter, though, the letter of rights is usually sent at the same time to the suspect.)

- Austria reports that, although the legal provisions are in compliance with the directive, a suspect will only be able to understand the written information if capable of mastering rather complex language.

- Estonia reports that the information is usually submitted to the suspect on paper, and the suspect is asked to read the text (which is an exact copy of the relevant provisions from the directive), and then confirm by signature that the rights have been read and understood. Oral explanation is rare, and only when the suspect explicitly asks for clarification. There is in addition no provision which requires the authorities to take the needs of vulnerable people into account. The respondent believes that this practice of submitting the text for reading cannot be considered as fully compliant, since the language is not simple and accessible.

- Bulgaria reports that when a suspect is arrested, there are nearly always 'informal conversations' between the police and the suspect, which do not form part of the official interrogation; these 'informal conversations' have no basis in law and the information gained from them has no evidentiary value, but they are often recorded by audio or video and reproduced in court, where they are sometimes accepted as valid pieces of evidence.

- In Scotland, the dichotomy between rights when deprived of liberty and when not so deprived is a false one, because all suspects are detained, and for the period their detention they are deprived of liberty, even if released afterwards without charge.

- Ireland reports that the government adopts a much more restrictive interpretation of "information" than do other Member States; or as favoured by defence lawyers. For instance, police like inviting suspects for voluntary interviews because there is no obligation to advise the suspect in those circumstances of their entitlement to have a solicitor present.

- Cyprus similarly reports that there is no obligation on the part of the police to warn the suspect before arrest and before the taking of a statement and/or questioning about his/her right to legal advice. This is believed to be an omission of Cyprus Law.

- In France, if the charges against the accused include a crime punishable by a minimum of one year's jail, the accused benefits from the right to a lawyer. Under such circumstances, no right to information is granted.

- In Greece as well, the defendant is usually not informed of the directive's rights at the time of the arrest, but only during first testimony before the authorities (police, investigators etc.)

- In Luxembourg again, the information on the rights is given at the police station, mainly orally, and the person has the right to talk to a lawyer before the interview; the same information is also given by the instructing judge before the hearing, orally mostly and in the presence of a lawyer - and in both cases the hearing reports contain the written formulation of these rights. But the information should be given prior to any hearing, and the written proof of notification should also be in a separate act.

- The Dutch respondent also questions whether the rights are communicated correctly. Sometimes, the rights are only explained very briefly. Sometimes, the suspect is not informed at all or only partly. In addition, not all suspects are informed in writing. The problem seems to be that though notification of rights is mandatory, its execution is not sufficiently recorded - whether notification takes place depends on case-by-case factors.

The inter-relationship between this directive and the directive on the right to interpretation and translation provides for instructive examples, too:

- Finland reports that, in the case of more unusual languages, it is possible that the information is not provided in writing at all, but orally via an interpreter (and according to information obtained from the police, the letter is available in only 10 languages).

- Greece reports that there is not always an interpreter for specific languages

Estonia and Finland report that there is not sufficient provision for vulnerable people (for instance in Finland, the needs of vulnerable suspects are to taken into account only by training investigative authorities).

(ii) Deprived of liberty

Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

In addition to the information set out in (a) to (e) above, the Letter of Rights shall contain information about the following rights as they apply under national law:

(a) the right of access to the materials of the case;

(b) the right to have consular authorities and one person informed;

(c) the right of access to urgent medical assistance; and
(d) 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 basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

The Letter of Rights shall be drafted in simple and accessible language.

Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

Once again, most Member States reported no problem in the implementation of the Letter of Rights. The exceptions were:

- Hungary and Luxembourg - no Letter of Rights at all
- Bulgaria - Letter of Rights is contained in an administrative order but only on police arrest, not on detention by the prosecutor or remand by the court
- France – the information is not provided as soon as there is deprivation of liberty, but only when the suspect or accused arrives at the police station
- Italy – no information on the possibility of challenge, review or request for provisional release
- Lithuania – there is information missing on the possibility of review or request for provisional release
- Poland – several rights missing, such as: the right of access to the materials of the case; the right to inform a third person about suspect's detention or arrest; the right to inform a consular authority or diplomatic representation about the detention or arrest; the right to urgent medical assistance; the right relating to the period of deprivation of liberty; and the right to information about challenge, review or request for provisional release
- Spain - it depends whether at the police station or in Court premises. At the police station, there is no information about the access to the file, neither the possibility to challenge the arrest. In Court premises, there is information about all these rights

Some Member States reported that their Letters contained more information than the minimum required by the directive, for instance:

- Finland – the right to correspondence and telephone calls and restrictions to those rights, right to outdoor recreation, right to property etc.
- Poland - the right to mediation in criminal proceedings, the right to apply for restitutive discontinuance of criminal proceedings, the right to apply for a conviction without a trial, the right to apply for a voluntary submission to penalty

One lesson of this report is that there is often a gap between the rights given in the directive and their implementation in real life. Here are some further examples:

- Finland referred to the 'Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 September to 2 October 2014'[9] which highlighted several problems with the right to medical assistance for suspects and defendants in police cells.

- Ireland pointed out problems with two rights:

    a) the right to silence is highly qualified in Irish law given that adverse inferences are permissible to be drawn from remaining silent. This leads to a most confusing situation from the perspective of a detained person whereby a caution is given to the effect that they have a right to remain silent and that caution is then withdrawn and a separate caution in relation to inferences is given.

    b) the right to a lawyer was strengthened following a decision of the Irish Supreme Court in 2014 (*White and Gormley*), after which the Director of Public Prosecutions issued guidance to the police to the effect that any person in detention who is to be questioned has the right to have a solicitor present if they choose. However, although the police routinely advise prisoners of this right, there have been complaints that the advice is often accompanied by the suggestion that this will delay matters or give the impression that the detained person is a serious career criminal. In addition, the government have not put in place a system whereby there will always be the availability of an experienced criminal lawyer to attend police stations when called for. Accordingly while in the main population centres, where there is significant competition among legal practices, there will always be a ready supply of solicitors available to attend at police stations, the situation is effectively the opposite in more remote areas where there are fewer lawyers, less competition (particularly at unsocial hours) etc.

- The Netherlands also pointed out problems relating to various rights:

    a) regarding the right to a lawyer, the suspect has the right to have a confidential conversation with a lawyer prior to the first interrogation. Hence the scope of participation by the lawyer seems more restrictive in the Netherlands than demanded in the directive, because the suspect does not have the right of full access to a lawyer, in the sense that of being informed that he/she can contact a lawyer at any stage of the proceedings and that can communicate confidentially and in person with the lawyer at any time.

    b) regarding the right inform a third person about the detention, the government brochure reads that the suspect is 'entitled to request that a family member or a housemate is informed of the fact that he is detained'. The wording of the brochure does not guarantee that that request indeed is awarded; it might be refused. Further, according to the Directive the person that should be inform about the detention can be any person where the Brochure is limited to family members or housemates.

    c) regarding the right to inform consular authorities, the Dutch brochure seems to restrict this right by only guaranteeing that the suspect has the right to request the consular authorities to be informed.

[9] http://www.cpt.coe.int/documents/fin/2015-25-inf-eng.pdf

d) regarding the right to urgent medical assistance, the wording of the Dutch brochure is less imperative: the suspect may inform the police when he/she feels ill and may ask for a doctor.

e) regarding the right to challenge, review or request provisional release, the brochure states "Ask your lawyer or the judge what your possibilities are in case you do not agree with your arrest or with the fact that your detention is extended" which seems beneath the level of 'basic information' required by the directive.

The same lesson applies to the language in which the Letter is written. Despite the directive's requirement that the letter be in simple and accessible language, the following examples were given:

- Austria reports that in practice the suspect must be able to understand rather complex legal language.
- Finland reports that the Finnish version of the letter is seven pages long, and may not be easily understandable due to its length and several exceptions to rights, which are described in some detail.
- France says that there can be difficulties with suspects or accused who speak rare languages.
- Italy reports that for some information (i.e. access to legal aid) there is a reference to the specific law, and sometimes it is difficult for a lay person to understand if and how he or she may be eligible for legal aid.
- Lithuania says that the information is provided in legal language that is difficult to understand for a lay person. In fact, the information is a copy of a particular article from the criminal code. The content of any particular right is not given, nor is the right explained in a simple and accessible manner.
- Spain says that the language is simple for lawyers but may be confusing for citizens and the public in general

Theme 2 – right to information about the accusation

(i) Not deprived of liberty

Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

(ii) Deprived of liberty

Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

General
Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given as above where this is necessary to safeguard the fairness of the proceedings.

No Member State reported a problem with the time when the information about the accusation was provided.

But the following interesting comments, which may highlight the reality on the ground in many other Member States given that they are rather similar, were provided regarding the interplay between the time of giving the information, and its content:

- Ireland - It becomes a matter of police tactics as to the extent of disclosure that is made to people taken into custody during detention, depending on the strength of the case that the authorities have. This is considered an unfair practice by defence practitioners, because they believe that if full information is provided at an early stage to a suspect, they are put in a stronger position to make reasonable decisions in relation to how they are going to deal with the allegation, and in particular if appropriate and a confession is warranted, to make a confession and extend cooperation to the authorities at the earliest possible time. This can become very material at a later stage in relation to sentence, particularly for instance in cases of drug trafficking, where a mandatory 10 year sentence will apply unless meaningful cooperation was extended at the earliest possible time. The withholding of information from suspects during detention compromises their ability to make fully informed decisions.

- Netherlands - it is common practice that the suspect is only briefly informed, prior to the first interrogation, about the reason for being under suspicion. This brief notification is mostly limited to mentioning the category of the offence (e.g. "theft"). As little as possible factual, relevant information is disclosed, based on the general assumption that disclosing those facts would be detrimental to the investigation. It is not always mentioned on what date the crime was committed, whether the offence was committed within a longer period of time, whether the offence has been committed before, or whether there are any accomplices.

Belgium, Bulgaria, Finland, Luxembourg, Poland and Sweden reported similar practices in their own Member States.

Northern Ireland described a process of structured interviews, whereby the detained person will be asked to give an account of their movements at the relevant time. Often in this process the police will indicate that they are seeking to test the truthfulness of the detained person's account, and will indicate that they have not fully disclosed all of the evidence or material in their possession.

Sweden reported a good practice in investigations concerning economic criminal offences. In connection with the first questioning, and before the questioning starts, a relatively detailed description of the criminal act in writing is handed out to the suspected person and his or her lawyer.

In Spain, detainees are given oral information. The police do not show the file. In Investigation Courts, the suspect has full access to the file. The Investigation Judge has to give oral information about the provisional charges, but normally he/she fails to do so. At the trial stage, the accused receives this information through the indictment.

Regarding information about changes in the information:

- France - the main problem is that the police are entitled to change the legal categorisation of the facts. In such a case, the first notification is invalid, without a second and subsequent notification. Either the police start all the notifications from the beginning, or they just mention the change during the interview and keep on with the custody measure.

- Italy - the prosecutor may not make any changes to the information, but the defendant can then be found guilty (in cases where the defendant has no lawyer) of slightly different offences. This is a very controversial point in the jurisprudence.

Theme 3 – right of access to the materials of the case

Access, as referred to throughout this theme, shall be provided free of charge.

(i) Not deprived of liberty

Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

Access to the materials shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

General

There are problems with the implementation of the scope of this right in many Member States, as follows:

- Cyprus - when the suspect/defendant applies in writing for the material evidence of the case, then there is a charge to be paid to the police (it costs a few cents per page, and if there are photographs, the cost is considerably more), even though the directive states that the material must be provided free of charge.

- Czech Republic – only someone who has been accused has a right to inspect his or her case-file, not a suspect. This right becomes subject to legal remedy only once the defendant has been informed about the possibility to inspect the file (which is at the very end of the investigation. Therefore, should the prosecutor deny the access to the file before that point, there is no right to request review of such decision. It is difficult for the defence lawyer to find that the client may be months or even years treated by the law enforcement authorities as a suspect, and so without access to the file. In these circumstances, a proper defence cannot be mounted. Sometimes it is a part of police tactics to deny access to the file.

- Estonia - in the vast majority of cases, access to materials is provided only after the close of pre-trial investigation proceedings, which could take many years. (The suspect and lawyer are entitled to apply for access to be granted earlier, but the prosecution has wide discretion to refuse it.)

- Finland - access is allowed only to material which “may effect or may have effected” the handling of the suspect’s case. This is usually a problem in criminal investigations where wiretapping is

carried out. The police are basically allowed to handpick the wiretapped conversations that they believe have relevance to the matter. (But all material is sent to all parties - prosecutor, court, defendant and complainant - to the same extent.) One exception to access to material involves crimes against children, in which complainants are interviewed on video. The videos are usually never sent to the suspect, but he/she is given the opportunity to be acquainted with the material at the police station. From a lawyer's point of view, this can be problematic, since it may be a long way to the nearest police station. It is also not often possible to arrange for a long meeting with a client in which both the lawyer and the client watch the video and thereafter, usually on the spot, must come up with possible additional questions to the child complainant or witness. It would be good if the videos could be released at least to members of the Bar, who are bound by a professional code of ethics.

- France - absolutely nothing is provided regarding access to the material of the case. Police refuse to provide the so called "file", and only give access to information of minor importance such as the legal notification of custody (which is obvious when examined in a police station), medical reports, information on the rights given during custody. France has deliberately decided not to implement the directive on this issue, to restrict lawyers' access to the file during custody, and so let the police have a free hand in conducting the interviews and investigations.

- Ireland - the material is generally only made available to the accused person after their first appearance in Court and following a direction from the judge. The material is then often provided only a matter of days before a trial takes place, which is considered unsatisfactory. There is no statutory scheme governing disclosure and this is a subject of criticism by defence lawyers. A real concern is that no individual person is identified as having responsibility for the completeness of disclosure, and accordingly nobody is accountable if there is a shortcoming.

- Italy - as a rule, access to the material for the purpose of reading it and checking it is free of charge, but obtaining copies can be in some cases be very expensive. Only an accused who is eligible for legal aid can obtain copies free of charge.

- Lithuania - the suspect has a right of access to the materials of the case during the pre-trial investigation stage, but this right can be blocked by the prosecutor's decision that becoming familiar with the case material could hinder the outcome of the pre-trial investigation. However, the law obliges the presentation of the materials of the case to the suspect or his/her lawyer that were submitted to the court while considering the detention of the suspect or the prolongation of detention terms.

- Luxembourg - information concerning the materials of the case in respect of article 85 of "*code instruction criminelle*" is made available to the lawyer and the suspected person only after first interrogation by the investigating judge. This procedure seems to be in conformity with the European human rights jurisprudence. (see *AT v Luxembourg* case[10])

- Malta – access to the file is granted upon request (materials that are not subject to privilege)

- Netherlands - prior to the moment an indictment is served, any request to receive the file should be addressed to the prosecution. The file is not automatically provided: the suspect, or lawyer, should ask for it. In other words, the prosecutor's work processes are not implemented in such a way that the file is provided to the suspect or lawyer directly after the first interrogation. Dutch

[10] http://hudoc.echr.coe.int/eng?i=001-153482#{"display":["0"],"languageisocode":["FRE"],"appno":["30460/13"],"itemid":["001-153482"]}

law explicitly requires the suspect to be active and to file a request, while the directive requires an active attitude from the authorities of the Member States.

- Portugal - access of the materials is occasionally not provided appropriately. For instance, access is sometimes limited; on occasion it is difficult to access the materials because there is a profusion of documentation and it is necessary to consult it at the court; sometimes access is not granted in due time - it depends on the judge.

- Spain - there are serious problems with access to files in police stations. The directive and the law which implemented it do not seem clear. They state that the competent authorities have to show the documents which are 'essential to challenging effectively, the lawfulness of the arrest or detention', but, there difficulties in identifying this type of document. The police, despite this provision, still deny access by the lawyer or the person arrested to the file. Even if access is sometimes achieved at the police station, access is restricted (i.e. it is not possible to make copies of the documents, so the lawyer has to read them on the spot).

- Sweden - there is no unrestricted right of access to the material during an ongoing preliminary investigation. When a person has been made aware that he or she is suspected of a crime, the person has the right to be informed continuously of developments in the investigation, but only to the extent that it can be done without prejudice to the ongoing investigation. There is no standard practice of granting continuous access to the material from the preliminary investigation. Such access is in principle granted only on request from the suspect or lawyer, and then only under certain circumstances (e. g. parts of the material may in those investigations where there is extensive documentation be provided to the lawyer). Information about specific facts and circumstances from the investigation is usually only provided to the suspect during questioning and then as a "basis for confrontation". Before the prosecutor decides on the prosecution, the investigation material is made available to the suspect. The material is compiled in a record of the preliminary investigation. At this stage the suspect has no formal right to obtain a copy of the record. A copy can be made available e. g. at the police station, for reading only. However, if a lawyer is appointed at this stage, a copy of the record is usually handed out.

- Northern Ireland - prior to the interview or at interview, evidence will be put to the accused by the police to allow the accused to offer any explanation or account that they have to explain their position. Written copies e.g. of statements are not normally provided at this stage. At the court stage, there is usually no problem in principle, but It can take a long time for a case to be prepared for serious criminal charges – for instance, it is quite usual for there to be a preparation time of 8-12 months without any evidence being served.

Quality and quantity of material

Regarding the quality and quantity of material provided, there is generally no problem, and everything is provided. Bulgaria is an example of a Member State where access is provided to all materials regardless of the stage or type of proceedings. But other Member States limit the scope, as follows:

- Belgium – the scope is limited depending on whether the suspect is deprived of liberty (no limitation of scope) or not deprived of liberty (the judge may limit the scope)

- Ireland - in the preponderance of cases which are dealt with by a judge alone in the District Court, the material provided is limited to the statements of intended prosecution witnesses. Fuller disclosure is more generally a feature in more serious cases tried in the higher Courts before a judge and jury.

- Latvia - after completion of pre-trial criminal proceedings or when the case is closed, access to the material is fully provided, except when the material contains state secrets or sensitive personal information (like the address of another person, information about someone's health condition etc).

- Lithuania - the documents that are provided to the suspect during the pre-trial investigation stage are not of a sufficient quality to challenge effectively the legal and factual grounds of the suspicion. When the pre-trial investigation is finished, access to the case materials that are going to be submitted to the court is provided in full extent.

- Poland – classified material can be withheld. In addition, the specific procedural stage and its circumstances may determine the scope of access to materials. Sometimes all materials will be allowed, and only certain materials or certain way of their processing.

- Slovakia - the voting report and those sections of the report that contain data on the identity of an undercover agent may be withheld.

Manner of access

The material for small cases is usually by way of paper. For cases with larger documentation, electronic formats are usually used – DVD, CD-Rom etc. Although digitalisation of documentation is underway here and there (for instance, in the Netherlands), Estonia and Scotland are examples of Member States where documentation is provided primarily in an electronic format – although even then Estonian authorities will provide paper documentation on request, for instance if the defendant is in custody.

The Czech Republic reports a trend which must be growing everywhere: that in practice lawyers take photos of the hard-copy file, via a camera, mobile phone or scanner.

Luxembourg reports a regrettable practice, whereby the lawyer has to consult the file in a room at the office of the investigating judge. As a result, there is no privacy because other lawyers are also there to consult their own case files. This also means that the lawyer has no possibility to go through the file together with the client until the end of the investigating period, because the lawyer is not given a hard copy. In addition, when entitled to a copy, the right to obtain a copy for whatever reason has been abolished, meaning that while the public prosecutor can obtain permanent access to the materials, the defence cannot - a bad example of inequality of arms between prosecution and defence.

France also reports that only visual access is permitted, and then to the limited and minor information already mentioned.

Access to the materials is granted to both suspect and lawyer everywhere, but there are some variations, as follows:

- Austria – the right is not granted to both lawyer and suspect at the same time.

- Netherlands - the files are provided only once. If a suspect has a lawyer, the lawyer receives the file and is supposed to provide the client with a copy to be able to discuss it with the client.

- Portugal - access is granted to the lawyer but not always to the suspect. In addition, access is limited during questioning until the suspect is formally accused.

- Spain – normally, the file is shown only to the lawyer.

- Northern Ireland – the right is granted to either the suspect or lawyer, but not both.

Charging for the materials

Access to the materials is free everywhere, but copies must be paid for in many Member States. The charges vary. In some Member States, one copy is provided free of charge (for instance, Finland, Hungary, Poland, Northern Ireland). Elsewhere, the charges are a small example of how the cost of justice varies by Member State:

- Austria - paper copies: €0,63 per page; €0,32 if the copy is made without using resources of the court (e.g. by taking a picture with a digital camera); electronic transmission: €0,32 per file.

- Croatia – paper copy: 1,00 HRK

- Greece - the cost depends on many factors (e.g. court, the size of the file, etc.). For example, in Athens, the cost of obtaining copies is €0,8 per page

- Poland - the charge for ordinary copies is 1 PLN (about €0,25 cents) per page, and for certified copies 6 PLN (about €1,50) per page

(ii) Deprived of liberty

Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.

General

Once again, serious problems were reported by many respondents, as follows:

- Bulgaria – national law does not explicitly give the right to access the material in these circumstances, although in practice access is given in accordance with the requirements of the directive when a suspect or defendant is detained by a prosecutor or court, but not when the suspect is subject to police arrest.

- Czech Republic – the criminal code does not properly regulate the time immediately after detention: the suspect has to be handed over to the court within 48 hours, and the courts has to decide within 24 hours about continuation of the custody. In practice, the suspect is often informed by the judge during the custody hearing about the content of the motion of the public prosecutor regarding custody or the defence lawyer receives the prosecutor´s written motion on the spot during the court hearing, but not in advance. This procedure makes a proper defence difficult.

- Estonia - granting access is subject to a decision by the prosecutor, and the prosecution has a wide discretion to refuse access – for instance, a prosecutor may refuse access to evidence if this may significantly damage the rights of another person or if this may damage the criminal proceedings. This provision is also applicable to all materials, including materials related to justifying and contesting detention. In practice, this provision has also been used to deny access to detention-related materials.

- Finland – practice varies a great deal. Usually before or even at the first detention hearing, there is very little material for the suspect. Before the changes in law in 2014 to implement the

directive, it was usually enough that the head of investigation told the court why probable causes existed for detention. Nowadays this is not enough, but some concrete evidence, such as extracts from interrogations etc. is - or at least should be - required. The current situation is still at a preliminary phase in terms of the implementation of the directive, and it remains to be seen how the jurisprudence evolves, and if further changes in the law are needed. During preparations for implementation, attention was drawn to this aspect of the law by both the Finnish Bar Association and the Helsinki Court of Appeal.

- France – the same position applies here as to access to materials when not deprived of liberty i.e. only minor documentation is made available.

- Ireland - progressive police officers increasingly understand the wisdom of the fullest disclosure at the earliest time. However, older policemen, used to the formerly prevailing practice, are inclined to retain material. A particular frustration for defence lawyers is that, in interviews, accused persons are confronted with selective quotations from the statements of other witnesses, potentially eyewitnesses etc. Police put the most damaging parts of the statement to the accused person, without perhaps adding in detail that would assist them, for instance that the purported eyewitness had been intoxicated, or had expressed doubts etc.

- Latvia - in law, access to materials to substantiate the detention is granted, but in national practice it is not.

- Luxembourg - None of the documents is available before the end of the first interrogation. During the first interrogation, the investigating judge takes the decision on preventive detention. So at this precise moment the lawyer or the suspect are not in possession of the documents. This is contrary to the spirit and the text of the directive.

- Netherlands - where a suspect is being detained or put in pre-trial detention, he or she should be brought before an examining judge within 3 days and 15 hours, beginning at the moment of arrest, at the latest. Prior to these proceedings before the examining judge, the lawyer receives that part of the file that should enable a challenge to the decision to detain, and to verify whether there are grounds justifying a remand in custody (*inbewaringstelling*) ordered by the examining judge. The file that is provided includes information about the suspects judicial record (*justitiele documentatie*). As the examining judge needs a copy to take the decision, the lawyer receives a copy as well. This copy is only delivered to the lawyer a few hours prior to the start of the in-chamber hearing of the examining judge. As a result the lawyer does not have sufficient time to actually study the file, but has to go through it very quickly, scanning the most relevant parts. After receiving the file, the lawyer also does not always have the opportunity to discuss the file with the client prior to the in-chamber hearing with the examining judge. This is a significant defect as often this is the first time that the lawyer is able to take notice of the evidence that the police has collected, and there is something important at stake, because the examining judge may order a remand in custody of 14 days. The importance of this is further underlined by the fact that a suspect who receives a remand in custody will most often be held in pre-trial detention until the first public court hearing, which will be scheduled for about three months later. Again also at this stage, it is the lawyer who has to provide the client with a copy - the examining judge provides only one copy, and not an additional copy for the suspect.

- Portugal - in practice, access to the materials is occasionally not provided appropriately (for instance, it is limited during questioning).

- Spain – as reported above, there are problems with gaining access to documents in police stations.

- Sweden - the right of access to the material as set out in the Directive has been implemented into Swedish law as a right of access to information. The relative vagueness of the term 'information' may hinder consistent practice on how the relevant material (e.g. documents, confrontation material, audio and video recordings) are to be presented to the suspect. There is no actual right to receive a copy of the relevant documents. The information of relevance to the decision of arrest or detention can be made available to the suspect either orally or in writing.

Time of provision

Again, those who draw attention to problems in practice may be highlighting a more general reality in other Member States:

- Ireland - detentions for the purpose of investigation in Ireland can be quite lengthy, including up to 7 days in organised crime and drug cases. The first 48 hours are authorised by the police themselves. Thereafter, application is made to a court for an order extending the period of detention. As a matter of tactics, the authorities will put questions in the final interview of the 48-hour portion, which they then say requires them to make further enquiries to vouch for the answers given e.g. alibi etc. This is used as a method of justifying an extension. Often the most damning material is withheld until the final interview of a seven-day detention period, to maximise the possibility that suspect or defendant will commit to a patently untrue but exculpatory version which can be undermined.

- Slovenia - access to materials must be granted by police where a suspect's detention lasts more than six hours, for the purpose only of an appeal against detention. However, in practice, during the police detention/arrest, the suspect is not given access to documents related to the specific case in the possession of the police.

- Sweden - there are no explicit provisions in Swedish law concerning the right of access in due time, as set out by the directive. As access to the information upon which the arrest order is based depends in practice on a request from the suspect, it is questionable whether Swedish practice meets the requirements of the directive fully. The documents are normally provided to the lawyer shortly before the detention hearing - usually the same day as the hearing, and rather often just before the hearing starts. Within these limited timeframes, and as additional information is usually presented during the hearing, it is doubtful whether the suspect is allowed an effective exercise of the right to challenge the lawfulness of the deprivation of liberty.

Quality and quantity of materials

Although most reported no problems with this aspect, some respondents complained of restrictions:

- Estonia - according to the law, 'any evidence which is essential in order to discuss whether an arrest warrant is justified and for contesting detention' must be made available. However, due to the fact that the prosecution has wide discretion to refuse access, it is effectively up to the prosecutor to decide what materials, if any, are made available.

- Lithuania - the quality and quantity of material provided to the judge who makes a decision about a suspect's detention or prolongation of its terms depends on the prosecutor, whose aim is to prove to a pre-trial investigation judge or to a judge of the higher instance that the particular suspect should be detained.

- Portugal - it is occasionally difficult to access to the materials, because there is a profusion of them and they must be consulted at the court.

- Slovakia - pre-trial, the judge may refuse the accused or his lawyer access to the whole file in proceedings regarding detention, apart from information related to the facts and evidence relevant for the decision on detention itself, if access to the whole file could threaten the purpose of the criminal investigation.

- Sweden - in some cases, often in larger-scale investigations, only a memorandum with a summary of particular circumstances of the investigation is provided to the lawyer.

Manner of access

The position is more or less as reported above in relation to cases where the suspect or defendant is not deprived of liberty, except that this time paper copies are primarily mentioned, with barely a mention of electronic versions. This is presumably because electronic viewing is difficult (or impossible) in detention.

Ireland reports that most information communicated to a suspect during detention is communicated orally. Exhibit materials are rarely handed over in hard form. In addition, the suspect does not have the opportunity of reviewing CCTV footage alone with his or her adviser.

The position is also similar regarding whether the access is granted to the lawyer or suspect. As before, it is mainly granted to both, but not exclusively so. In Spain, for instance, it is granted only to the lawyer at the police station, but to both at court premises.

Charging for materials

The position on charging is also as when the suspect or defendant is not deprived of liberty, with one copy free of charge. But respondents also reported the following:

- Bulgaria - access is granted free of charge, but this is not explicitly provided for by law. In order to reinforce the "free of charge" requirement, the criminal code should be amended.

- Greece - access is never given free of charge, even if the suspect or defendant has a low income. The cost depends on many factors (e.g. court, the size of the file, etc.). For instance, in Athens, the cost of obtaining copies is €0,08 per page. Photocopies are usually made by individuals operating in the courts. However, the lawyer may study the printed file in the department where it is kept without obtaining copies.

(iii) Derogation when not deprived of liberty

By way of derogation, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if:

(a) such access may lead to a serious threat to the life or the fundamental rights of another person or

(b) if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted.

Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this derogation is taken by a judicial authority or is at least subject to judicial review.

The position in the Member States varies widely as follows:

Only the following Member States permit derogations in respect of both (a) and (b) above - Austria, Belgium, Croatia, Cyprus, Greece and Slovenia.

Many more Member States allow a derogation only in respect of (b), as follows:

- for state secrets – Hungary and Latvia.

- where access could prejudice an ongoing investigation – Italy, Lithuania, Netherlands, Poland, Slovakia, Sweden, England and Wales.

- where the public interest needs safeguarding – Luxembourg, Scotland and Northern Ireland.

In the Czech Republic, suspects do not have the right to access case-files at all. Only an accused can do so. As a result, the defence is under a serious handicap since a client may be considered by the law enforcement authorities as a suspect for months or even years, and throughout that time the defence is unable to have access to the file and undertake a proper defence. Access, when granted to an accused, is to the whole file, however, except for the judges' voting and the personal data of a witness whose identity is kept secret. Restrictions to this right may be made only on 'serious grounds' during the pre-trial stage, but not once the accused and lawyer are informed about the right of access to the file at the end of the investigation.

Estonia points out that the exact wording of the derogation in national law is important. In Estonia, a prosecutor may refuse access to evidence if access may significantly damage the rights of another person or if may damage the criminal proceedings. Such grounds are below the standard provided by the wording used in the Directive. In practice, the vague term "serious grounds" justifying denial of the access is typically applied by the police before the accused is first questioned, meaning that the accused has no knowledge of the evidence the police have against him (for instance, what witnesses said etc.). The respondent reports that sometimes it is part of the police tactics to deny access to the file.

Finland reports that appeals against a decision made by the prosecutor to refuse access to the file must be directed to the Helsinki Administrative Court. But this is not an effective remedy because decisions from that court take around a year to be handed down (and there can then be a further appeal, even by the investigating authority, to the Supreme Administrative Court). The legal provisions applied are different from those applied when dealing with a case in ordinary courts, and the Administrative Court has been known to rule that the investigating authority has not breached the Act on the Openness of Government Activities and that ensuring a fair trial is the responsibility of the court dealing with the principal (criminal) case. There is also a problem, which is likely to be widespread, that the defence is entitled to ask for a document, but is by definition not in a position to know what documents the investigating authority possesses.

France points out that, because there is no access to the real file, no derogation is provided for.

Ireland reports that during periods in custody there is still no currently understood entitlement to have access to the full (or any) case materials. Accordingly, the issue of derogation does not arise. The directive will undoubtedly lead to further litigation in Ireland about the extent to which information should be released. If the prosecution has material which is relevant, but which they claim should be withheld on grounds of national security or similar, it must seek a ruling of the court to that effect. The usual privileges sought are for informer privilege (not disclosing the source of information received by the police) and national security.

In Spain, there can be derogation only under special circumstances: where there is danger for the investigation, or for persons, in serious crimes.

A number of member states point out that refusal of access to the file can damage defence rights and prejudice a fair trial, for instance:

- Austria - the protection of third parties may conflict with the right to a fair trial.

- Estonia - suspects are remanded in custody on the basis of materials to which the defence has not had access.

- Finland - a court may have the tools to ensure a fair trial only at the main proceedings, not at the coercive measures stage, when it possesses all other material in the case. This can happen years after the deprivation of liberty already has ended.

- Lithuania - the prosecutor can refuse access to the defence with the argument that becoming familiar with the case material can hinder the success of the pre-trial investigation. It is obvious that such an argument is too vague, and prejudices the right to a fair trial.

- Slovakia - the right of the authorities to refuse access to the file may be intentionally abused.

- Spain - if the period of secrecy lasts too long, and during it the investigator judge produces personal evidence, it is difficult afterwards, in the investigation stage or at the trial stage, to challenge the outcome of this evidence already provided (i.e. expert statement, witness statement…who made their statement without a cross-examination). If the evidence produced during the period of secrecy is of a documentary nature rather than a personal one, the rights of the defence may be not affected. The longer the period of secrecy, the more possibility of affecting defence rights.

- Sweden - if the lawyer receives the material only when the indictment is presented to court, there is a limited time to go through the material and prepare the defence, which obviously might prejudice the right to fair trial. A refusal of access might also affect the possibilities of challenging coercive measures carried out in the course of the investigation.

In Northern Ireland, a disclosure judge will look at material and direct that it be disclosed or not. If disclosure is directed and the prosecution are not willing to do so, then case will be stayed.

The derogations from allowing access are taken by a judicial authority or subject to judicial review in most Member States. Exceptions include:

- Belgium – the decision of the investigating judge to refuse access may be challenged on appeal, but not the decision of the prosecutor.

- Italy - the only remedy for the defence is to apply for invalidity and nullity of the trial for the infringement of free and full exercise of the right to defence, even at the same time as an appeal against conviction.

- Sweden - there is a an appeal only to a higher prosecutor.

Lithuania reports that, although there is a judicial review of the prosecutor's decision, pre-trial investigation judges mostly do not in practice turn down the decision of the prosecutor regarding the use of the derogation.

Theme 4 – verification and remedies

Member States shall ensure that when information is provided to suspects or accused persons in accordance with:

(a) the right to information about rights

(b) the Letter of Rights

(c) the right to information about the accusation

this is noted using the recording procedure specified in the law of the Member State concerned.

Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.

The information about the right to information about rights is recorded everywhere except Luxembourg.

The Netherlands reports that in practice the file mentions that the suspect or accused has been informed only of some rights (right to silence and right to a lawyer).

Ireland also says that practice does not comply with the directive, and a new notice is being developed.

Sweden reports that notes of the information provided on procedural rights are not systematically included in the record of the preliminary investigation that is delivered to the lawyer. As a result, and because a lawyer has not usually been appointed at the time when the information should be provided, the lawyer often has limited knowledge of whether the information has been provided in full accordance with the directive.

The information about the delivery of the Letter of Rights is recorded more patchily. There is no provision for such a record to be made in the criminal codes of Estonia and Slovenia, and a Letter of Rights does not exist in Hungary and Luxembourg.

If the information is not provided in accordance with the directive, especially regarding information about the accusation, there are two routes mainly used: either the lack of provision of rights is challengeable in the courts; or evidence obtained without the information having been provided is inadmissible.

Austria points out that it may happen that the suspect is not informed at all (even about the fact that there is an ongoing investigation against him or her), which makes it practically impossible in some cases to challenge the failure to provide information on rights.

The Netherlands raises another general point by explaining that an important starting point in determining whether a breach in relation to these rights should result in a sanction is whether the breach has further detrimental consequences for the suspect, and, if so, whether it can be repaired. If it has no further detrimental consequence, then there may be no need for a sanction. And if the breach can be repaired, then the repair should be undertaken also without further sanction - for instance, if a suspect receives the file too late, the court hearing can be postponed to give the suspect sufficient time to prepare.

There are problems with challenges in the following Member States:

- Belgium – a prosecutor's actions are not challengeable in the court.

- Estonia – there is no provision in the criminal code specifically devoted to challenging failures or refusals to provide information. General provisions on complaints apply, but this procedure cannot be considered effective in these circumstances.

- Finland – if there is a refusal to provide information about certain documents, this can be appealed to the Administrative Court (which is, as previously mentioned, not considered an effective remedy). Another problematic matter is that even though the investigating authority should by law keep a record of material, which is deemed unnecessary and left out of the final police report, and include this record with the police report, in practice this is not always done. It is hoped that the implementation of the directive will bring positive changes in this regard.

- France - there is no possibility of challenging a failure or refusal. Access to the file during custody led to significant constitutional litigation before the Constitutional Council, which ruled that access to file is not granted by the constitution. Claims are pending before the European Court of Human Rights.

- Ireland – as already mentioned, the law in relation to disclosure is unsatisfactory. The Director of Public Prosecutions is accountable in a general way but that is not considered by defence practitioners as being as effective as an individual policeman in a particular case having to list all relevant documents and account for the disclosure exercise. Equally the issue of claiming privilege is unsatisfactory. This is because there is no procedure where special independent lawyers are engaged to have sight of documents which the prosecution contend cannot, on grounds of national security or similar, be provided either to the accused or the accused's lawyers. Instead the documents are provided to the judge or judges and they are inspected to make a decision as to whether they are essential for production to ensure the fairness of the trial. However, the judge or judges do not have the benefit of the instructions of the accused and are not in a proper position to assess what the defence case is likely to be, given that there is no written procedure providing a defence case statement in advance of trial.

- Italy - as already mentioned, there can only be an application for nullifying the acts after the failure to act in accordance with the directive

- Poland - there is no provision in the criminal code specifically devoted to challenging failures or refusals to provide information. In practice, a failure or a refusal by a competent authority is raised in an appeal.

- Spain - it is possible to challenge the lack of information at the judicial stage through the current remedies against judicial decisions. The problems arise at the police station. If the police deny the right to access to the documents in the police file, the person arrested or his/her lawyer only can issue an *habeas corpus*, or, otherwise, ask the police to record the petition denied in the moment the act that took place.

- Sweden - there is no provision in the criminal code specifically devoted to challenging failures or refusals to provide information. An application for review by a higher prosecutor can be made, but the practical effect of such an application may be questioned.

General questions

Has the directive brought important changes on the right to information in criminal proceedings in the legislation and practice of your Member State?

The following member states report that substantive changes had been introduced as a result of implementation of the directive – Austria, Cyprus, Estonia, Lithuania, Malta, Poland, England and Wales.

The following said that there have been no important changes introduced – Belgium, Croatia, Czech Republic, France, Luxembourg, Portugal, Slovenia, Spain and Scotland.

France qualified its answer above by saying that the directive was supposed to bring very important changes to the law, but that national implementation, which is not in conformity with the aim and requirements of the directive, removed all the hoped-for effects. French lawyers have decided to attach each time a note to the file noting that access to the file has not been granted, and so does not allow the lawyer to defend effectively his or her client.

Finland and Sweden said that it was too early to say.

The directive has not yet been implemented in the following Member States – Slovakia and Bulgaria

Examples of aspects which have changed:

- Austria - The presentation of a Letter of Rights to the suspect was an improvement.

- Czech Republic - The new implementing legislation added information about the right to urgent medical assistance, about the maximum time for which a suspect can be deprived of liberty before being handed over to the court, and the right to have the consular authority and a family member or other natural person informed on custody. These rights had not been specifically listed before.

- Estonia - The directive brought the following important changes: the introduction of the Letter of Rights, and the possibility to obtain access to the case file before the close of pre-trial investigation (previously, there was no possibility for such access at all).

- Greece - Effective changes were: a) information on the accusation and the suspect, and b) the Letter of Rights.

- Hungary - In case of persons in detention, it is a novelty that the materials underlying the detention shall be provided to the suspect and the lawyer before the decision of the court on detention.

- Latvia – the most important change is the right to become familiar with the materials of the case, which constitute the basis for the proposal to apply a security measure related to deprivation of liberty, insofar as such access does not infringe the fundamental rights of other persons, the interests of society and does not interfere with the objective of the criminal proceedings. Unfortunately, this right does not work in practice, and familiarisation with the materials of the case which constitute the basis for the proposal to apply a security measure related to deprivation of liberty is almost always refused.

- Lithuania - the substantial change in national law is the obligatory provision that obliges the prosecutor to ensure access for the suspect and/or the lawyer to the case material that was

presented to the judge while deciding upon the detention of the suspect as well as the prolongation of the detention term.

What are the main aspects that could be improved, both at EU and national level?

EU level

Scope

- Cyprus – the scope of the directive should apply not only to suspects or accused but also apply to anyone questioned by the police (or other competent authority), even though at the time they are not suspected or accused. This is because during police questioning a person may give evidence which is self-incriminating. In addition, the Directive should apply when a person is not yet suspect or accused but there is court order for search of his/her premises.

Information about the accusation

- Cyprus - the directive should cover not only free access to information about the criminal proceedings, but also provide the suspect or accused with the right to obtain free copies of the material that is going to be used against him or her in court. The usually defined 'essential documents - a copy of the arrest and detention warrant, a copy of the application and the affidavit on the basis of which the warrant was issued - might not be enough to challenge the lawfulness of the arrest.

Time to absorb the information

- Poland – it would be a good practice if it was obligatory to offer a person who has just obtained information on his or her rights a reasonable time to assimilate it in a tranquil atmosphere and with the possibility of asking the competent authority questions connected to those aspects of the right to information which are a procedural safeguard for other rights – the right to defence and the right to a fair trial.

National level

- Belgium - the following could be improved in Belgium:

    a. the information provided to the suspect (whether deprived of liberty or not) should be more precise and complete, in order to enable the suspect to exercise his right of defence more effectively during questioning (instead of discovering the exact scope and subjects of the facts under investigation through the questions raised in course itself of the questioning).

    b. the introduction of an appeal against the decision of the Prosecutor to refuse access to his file.

- Cyprus - there is no obligation on the part of the police to warn the suspect before arrest and before the taking of a statement and/or questioning about his or her right to legal advice. The scope of the Rights of Persons who are Arrested and Detained Law should be extended to include the right to information of criminal proceedings to the suspect before he or she is arrested.

- Estonia - the way the government has implemented the directive is clearly not in accordance with the directive (the prosecutor's wide discretion to refuse access, even in situations where the

subject matter of such refusal is detention-related material). As a minimum, the state must bring its regulations in accordance with the directive.

- France – see above. National implementation is not in conformity with the aim and requirements of the directive as regards access to the file.

- Lithuania - concrete grounds under which the prosecutor can refuse access to any case material should be given in the law.

- Luxembourg - immediate and full access to all relevant proof in the case should be given to the lawyer before the lawyer has to assist the client, to make the assistance real and effective, and not hypothetic and illusionary. Authorities such as the police and investigating authorities request at present an exclusion of communication of all acts still under execution ('*demande d'exclusion de tous devoirs en cours d'exécution de cet accès au dossier'*) . This argument of investigating authorities should not become an argument to refuse the complete access to the file, and so hamper the activity of defence.

- Netherlands –

    a. defence rights should become better known within the police

    b. a non-motivated withholding of the file should be able to be challenged more quickly before an independent judge

    c. the information provided to the suspect when arrested or detained is too brief. It seems that this is not in compliance with the directive's preamble, where it is assumed that the suspect should be informed in as much detail as possible about time, place and the facts of the offence allegedly committed.

- Sweden - the following aspects could be improved:

    a. there is a need for coherent practice on how the material should be provided to the suspect or lawyer to allow the exercise of the right to challenge the lawfulness of the deprivation of liberty

    b. there is a need for coherent practice ensuring that the material is provided to the defence promptly, and at least in due time before a detention hearing at court.

    c. there is a need for a more frequent use of providing the suspect and the lawyer with material during an ongoing investigation, especially in cases with extensive investigation material

- England and Wales - the difficulty is that the directive has been implemented by way of amendment to the Codes of Practice issued under the Police and Criminal Evidence Act 1984 rather than by legislation. The Codes of Practice are not statutory instruments, and the Notes for Guidance which assist in clarifying some of the amendments brought about by implementation of

the directive have an even lesser status. Failure to comply with any provision of a Code does not of itself render the individual concerned liable to criminal or civil proceedings. Remedies for breaches of the Codes of Practice lie by way of complaint to the Independent Police Complaints Commission and, more importantly, may result in the inadmissibility of evidence obtained in breach of the Code in subsequent criminal proceedings.

Good practices

The following are reported, and may have EU-wide application:

Use of technology

- Austria - an important issue is access to the files in a way to keep the costs affordable. Paper copies are too expensive in Austria (62 cents per page). Therefore, in some major cases - often white collar crime - the court file is scanned and given on CD ROM (or USB stick) to the parties (which are usually very cheap). Moreover, the Ministry of Justice together with the Ministry of the Interior, are seeking to devise the technical means to grant online access to court files. Such online access is already standard in civil procedures; as soon as online access to criminal files is possible, defence lawyers will be able to have access to the files on a daily basis. However, it is not yet known when the system will be deployed.

- Estonia - providing access to materials by way of submitting an electronic copy of the case file can be useful, provided that the material has true electronic properties (i.e. it is properly indexed, searchable, etc). Unfortunately, the Estonian authorities do not apply this in practice, and our electronic copies are simply scanned PDF-files, which in essence are not much different from paper documents.

Information given on more rights than required in the Letter of Rights

- Finland – information given on the right to correspondence and telephone calls and restrictions on those rights, right to outdoor recreation, right to property etc

- Poland – information given on the right to mediation in criminal proceedings, the right to apply for restitutive discontinuance of criminal proceedings, the right to apply for a conviction without a trial, the right to apply for a voluntary submission to penalty

Police complaints

- Cyprus - the establishment of the Independent Authority for the Investigation of Allegations and Complaints against the Police (IAIACAP) in 2006 is good practice because, even though we have more or less the legal framework demanded by the European Union, in reality there are problems in complying with the law. An inclusion of the right to communicate with the IAIACAP and also an expansion of the current IAIACAP which will include permanent criminal investigators, translators, photographers and other personnel, will increase the confidence of the public that the police is under constant scrutiny, and that they comply with all the provisions of the law.

Lawyer of your own choosing

- Finland - the suspect is informed of his right to a lawyer of his/her choosing.

Proper co-ordination between authorities

- Scotland - Scotland has both a national police force, and a national public prosecuting authority. A Code of Practice sets out the roles and responsibilities of both the police and the prosecuting authority. This ensures (i) “joined up thinking” as between the police and the prosecutor, and (ii) consistency of practice across Scotland, which is commendable.

VI - Right of access to a lawyer

General

Given that the directive has not yet passed its compulsory implementation date (foreseen for November 2016), it has not yet been implemented in most Member States. As a result, the questions were different to those in the other two questionnaires, and concentrated on what changes needed to be made to national law, as opposed to what changes had already been made.

Theme 1 - the right of access to a lawyer

The right of access to a lawyer applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

The right also applies, under the same conditions as provided for above, to persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.

Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

the right shall only apply to the proceedings before a court having jurisdiction in criminal matters. In any event, the right shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of the paragraph below;

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

The right of access to a lawyer shall entail the following:

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;

(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

General

All Member States report in general that there should be no change needed in their current legislation to ensure that a suspect or accused has the right to a lawyer without undue delay.

But that does not tell the whole story. It deals only with the pure legal framework, and not with how things work out on the ground. It is striking to note how the responses of different Member States hit the same note in describing common practical difficulties in implementation. And, in describing these practical problems, it turns out that some legal amendments are after all necessary to the existing framework in some Member States.

Delay between arrest and notification of the lawyer

First, despite the law, there is the question of when the lawyer is notified of the case by the authorities:

- Hungary - it is essential that the lawyer is informed in a time and manner to ensure attendance at questioning. During the investigation stage, it is very common that the lawyer is informed about a questioning so late – for instance, a fax sent to the law office during the night about an appointment early the next morning - that the lawyer is unable to attend. (This problem does not occur at the judicial stage.) The Hungarian Constitutional Court has declared (decision Nr. 8/2013.) that if notification given to a public defender about questioning is not sufficient, and therefore the lawyer cannot be present, any confession by the suspect during the questioning cannot be used as evidence.

- Lithuania - in practice, there is a time gap between the moment of arrest and the moment when the lawyer is officially notified about the client's arrest and finds it possible to come to the police station or the prosecutor's office. Usually the investigators and/ or prosecutors use this gap to put psychological pressure on the suspect.

- Sweden - when a suspect is apprehended, an interrogation will be held as soon as possible. At this stage the suspect rarely, if ever, has access to a lawyer before or during the interrogation. There have also been recurring occasions when arrested juvenile suspects have not been assisted by a lawyer during the first interrogation.

France reports that information on access to a lawyer is not given as soon as the suspect or accused is deprived of liberty, but during the first interview by the police. When the suspects requests access to a lawyer, a postponement of the interview by 2 hours is granted to the lawyer to assist the client. During this postponement, no interview can be performed. When the lawyer arrives, whatever the importance of the file, he or she has 30 minutes to discuss the case with the client in a confidential room. This delay is usually not sufficient to listen to the client and perform a proper legal analysis of the case.

Availability of lawyers

Finland and Ireland both report on an identical practical problem which must be widespread among many more Member States:

- Finland - the system generally works quite well. One issue that has arisen is access to a lawyer during weekends, holidays, etc. There is no on-call duty system, and members of the Bar have been a bit reluctant to implement one on a voluntary basis, since there is no separate compensation for such a system. In the bigger city regions, there is usually a lawyer available quite rapidly. However, when going to more remote locations, especially in the north, a lawyer can be expected to drive a couple of hundred kilometres to be at a police station to assist in an interrogation. Even though videoconferences are not the optimal solution, it could be – in certain situations – a reasonable solution, if the other choice would be to wait for hours before being able to obtain access to a lawyer after being arrested. In order to realise this, more video conferencing devices would be needed.

- Ireland - there is no rota system established centrally to ensure that there are always qualified solicitors available to perform the task of advising suspects in custody. The problem is not acute in the main population centres such as Dublin, Cork or Limerick, where there is an abundant supply of solicitors and where there is competition for defence work among legal firms. This ensures that it is in the commercial interests of each solicitor's practice to ensure that there are solicitors available to attend Garda Stations even at unsocial hours. The situation is quite different in more remote areas, especially during unsocial hours. The individual police station has to seek to secure a lawyer if the suspect has not identified a lawyer of their own who will attend. The relative shortage of experienced lawyers means that the police routinely resort to contacting qualified solicitors who have no real experience in criminal law. This is a differential in terms of quality of representation that is disadvantageous to the suspect. The solution would be relatively straightforward in establishing a rota system whereby experienced lawyers were always on call in a given geographical area, but naturally this would come at a cost to the government as the solicitor on call would have to be paid for being on call. For this reason, the government has not taken this additional and essential step.

These two contributions highlight the following issues:

a) the lack of a duty or rota system

b) how such a duty or rota system will be funded, particularly in a time of economic austerity and public funding cut-backs

c) the inherent problems in remote areas with few lawyers present

d) whether there are acceptable solutions in technology (for instance, video conferencing) and whether having any solicitor, even an inexperienced one, is better than having none.

These problems cannot be newly arisen as a result of the directive, since Member States report that the relevant rights exist in their legislation before the directive is even implemented. But, given that there is now a directive and therefore a European interest in eventual implementation, they show what steps should be taken within Member States to ensure full and proper implementation of the directive.

Geographical remoteness is one of the permitted grounds for a derogation of the right of access to a lawyer – see Theme 2 below – but it is clear from the respondents' contributions above that the application of thought, resources and technology may be able to solve this problem without it having to be made subject to a derogation.

The Belgian Bars have come up with a solution, called 'Salduzweb', after the famous European Court of Human Rights case in *Salduz v Turkey* (Application no. 36391/02). In that case - on the right of access to a lawyer - the court found, among other things, that in order for the right to a fair trial to remain sufficiently 'practical and effective', access to a lawyer should be provided as a rule from the first interrogation of a suspect by the police. The objective of 'Salduzweb' is to find a lawyer within two hours of an arrest. It is an automated and secure system, backed up by an emergency phone number. It permits the suspect to have a confidential phone conversation with a lawyer before interrogation, followed by on-site assistance during interrogation.

This is how it works. After arrest, the law enforcement officer opens a file on 'Salduzweb', and the system then calls lawyers sequentially based on the case parameters. If the lawyer accepts, the system sends the lawyer a text message and an email with case details. The lawyer can then obtain access to the case on the system. The lawyer can call the law enforcement agency to speak to the suspect, or attend the suspect in person. If no lawyer is found, the 'Salduzweb' administrator at the bar is contacted, and will receive an automatic call plus text message and email. The administrator will then manually search for a lawyer who, when found, takes over the case using the Salduz number.

The system deals with around 4,000 cases a month. 77% of lawyers were assigned using the automated system, and 81% of the cases had a lawyer found through the system. The yearly cost of 'Salduzweb' is around €400,000.

Role permitted to lawyers during questioning of suspects

Even when a lawyer is present, it does not mean that a practical and effective defence is possible. The following problems, all more or less the same, were raised by a number of respondents:

- Austria - during questioning, the participation of the lawyer is limited to be present and to ask questions (after the police have finished their questions). The lawyer may not interfere or interrupt the suspect when he or she answers questions. This does not lead to a practical and effective defence during police interrogations.

- Czech Republic - suspects and accused persons have the right to consult their lawyer during questioning. However, they cannot consult the lawyer about how to reply to a question already posed. The lawyer may pose questions to people who are being questioned, including the client. When suspects are giving an explanation to the police, they cannot consult their lawyer during the explanation, but the lawyer may participate. However, the defence lawyer cannot ask any questions while the client is giving an explanation to the police, and this is an unnecessary burden on the defence.

- Finland - there is still a provision in the Criminal Investigation Act that allows for the lawyer to put questions only with the permission of the investigator. The investigator may also order that the questions are put via him or her. The lawyer may even be removed from the interrogation, if considered to interfere with the interrogation (although this is very seldom applied in practice, maybe because most lawyers sit quietly and listen, and only put one or two questions at the end). Even advice to the client not to answer a specific question has been interpreted as interfering with the interrogation. There needs to be a change in the law to allow the lawyer to participate more actively during the interrogation, while fully understanding that unnecessary interruptions will not be allowed.

- Netherlands - the participation of the lawyer is limited to being present. The lawyer may not interfere or interrupt the suspect when questions are being answered. This not a practical and effective defence during police interrogations and not in accordance with the directive.

- Slovakia - the suspect or accused does not have the right to consult the lawyer on how to respond to questions raised during the interrogation. The suspect or accused may only ask to be interrogated in the presence of the lawyer, and to have the lawyer present also when other pre-trial proceedings are being conducted.

- Sweden - there is an unrestricted right to be assisted by a public defence counsel. If the suspect has appointed a private defence counsel, the counsel may assist only if his or her presence would not be detrimental to the investigation.

Meetings in private with the lawyer

Under this heading, a range of different problems were raised:

- Finland - in some courts, for example the largest court in Finland, Helsinki District Court, the facilities for lawyers to meet with their clients are problematic. In Helsinki, there is only one room in which lawyers, one after the other, meet with their respective clients, in many cases for the first time. Given that there may be 20-30 detention hearings (or even more) in a day, this is hardly a practical and effective way of arranging the defence.

- Poland – in petty offences, a regulation which is expressed too generally gives a police official the opportunity to be present during the contact of a detainee with his or her lawyer without giving any reason for such presence. The defence in such a situation might obviously not be effective.

- Slovakia – a suspect who is apprehended, remanded in custody or who serves a prison sentence, may speak with the lawyer in the absence of a third person; but this does not apply to a telephone call of the accused with the lawyer while in custody, for which the conditions and mode are found under a separate regulation.

- Spain - in police stations, the right to defence is not effective, because the lawyer can interview his/her client prior to the questioning, but for a very short time, and with very poor privacy (a lot

of times, in an open room or corridor under the view of the police officer, who can hear the conversation). In addition, as already mentioned, the police do not allow access to the documents in their files regarding the case. Only a few documents are shown, but not consistently. The police officer makes his/her own assessment of which documents are going to be shown to the arrested person or his/her lawyer. This assessment is always very restrictive.

- Sweden - when the suspect is deprived of liberty, the right to have meetings in private with the lawyer is expressly guaranteed only when the person is arrested or detained. An amendment has been proposed, ensuring the right to meet in private also when the suspect is apprehended. In addition, a private defence lawyer – that is, one appointed by the suspect directly, and so not a public defender - is allowed to speak in private with the arrested or detained person only when it is approved by the leader of the investigation or when the court considers it would neither impede the investigation nor threaten order and security at the place of detention. In addition, a suspect may be denied the right to communicate with a private lawyer. This limitation can be applied to correspondence and electronic communication (e.g. telephone calls, e-mail), and may be imposed if the communication would threaten order and security or if it would impede the investigation. This limitation on the right of access to a lawyer based on how he or she has been appointed does not appear to be consistent with the directive. Limitations of a suspect´s right to contact or communicate with a private lawyer can hardly be justified when the lawyer is an advocate and a member of the Swedish Bar. Legislative amendments have recently been proposed stipulating that the same standard of right to contact, right to communication and right to correspondence shall apply regardless of the way of appointment of the defence lawyer.

Legal framework not complete

There are the following nuanced exceptions to the rule that no changes are needed to the legal framework.

- Bulgaria – the current set of rules implies that the right of access to a lawyer should be able to be exercised without undue delay, but, since the rules do not expressly say so, it would be better to have specific wording guaranteeing that aspect of the right.

- Cyprus - there is no obligation on the part of the police to warn the suspect before arrest and before the taking of a statement and/or the questioning about his or her right to legal advice. This is an omission of the law. The scope of the legislation should be extended to include the right to information of criminal proceedings to be given to the suspect before arrest. It would be better to enact a law based solely on the directive to avoid any conflicting provisions and have a unified legislation which provides clear provisions about the right of access to a lawyer.

- Netherlands - access to a lawyer is not yet granted at the stage of police hearings (although usually permitted by the police without obligation).

- Poland - the current regulations in Polish law concerning the right of access to a lawyer do not overlap exactly with the legal standard proposed by the directive 2013/48/EU – for instance, there is no express wording about the right of access to a lawyer without undue delay, and there is no right to have a lawyer participate in an identity parade.

Access to the file

France and Luxembourg raise a particular problem about undertaking a practical and effective defence:

- France - the assistance of a lawyer in custody in France is not effective because the lawyer does not have full access to the criminal file during investigations. The file is composed only of

documents of minor interest and does not allow the lawyer to provide the whole range of services specifically associated with legal assistance.

- Luxembourg - the assistance of a lawyer cannot be seen as effective, because the lawyer does not have access to the criminal file before seeing the person submitted to criminal proceedings. As a result, the only effective assistance a lawyer can give during police hearings and at the time of first interrogation by the investigative judge is to advise the client to keep silent. This point seems to be shared by the European Court of Human Rights in the AT vs Luxembourg case, already cited.

Theme 2 - derogations from the right

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the right to a lawyer under part (c) of the sixth paragraph of Theme 1 ('without undue delay after deprivation of liberty') where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in the last paragraph of Theme 1 ('The right of access to a lawyer shall entail the following') to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

Any temporary derogation under the above two paragraphs or under the third paragraph of Theme 5 shall

(a) be proportionate and not go beyond what is necessary;

(b) be strictly limited in time;

(c) not be based exclusively on the type or the seriousness of the alleged offence; and

(d) not prejudice the overall fairness of the proceedings.

Temporary derogations under the first two paragraphs of this Theme may be authorised only by a duly reasoned decision taken on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. The duly reasoned decision shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

Temporary derogations under the third paragraph of Theme 5 may be authorised only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

A number of Member States do not use temporary derogations at all: Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Portugal, Spain and Slovenia.

Where temporary derogation is permitted, it appears that Member States have their own criteria, which are not as strict or detailed as those of the directive, as follows:

- Austria – if necessary to prevent impairment to the investigation or to means of evidence
- Belgium - in case of exceptional circumstances and for imperative reasons
- Czech Republic - if execution of the legal act cannot be postponed and the informing of the defence lawyer cannot be secured
- Finland - due to weighty investigative reasons
- France - when the necessity of the investigation demands an immediate interview of the suspect, the presence of the lawyer can be postponed; and for major offences for imperious reasons to allow the gathering or conservation of evidence or to prevent an attempt on persons
- Ireland – threats also to property included
- Italy - to avoid co-defendants agreeing on a common position, especially in cases of organised crime
- Luxembourg - for special needs in relation with the investigation
- Malta – only in exceptional circumstances
- Netherlands - if it seems necessary to prevent impairment to the investigation or to means of evidence
- Slovakia - if the lawyer cannot be reached within the time limit specified therein
- Sweden - in certain circumstances if the lawyer is not a public defender but privately appointed

As a result, many Member States report that their temporary derogations legislation is not in compliance with the directive's requirements.

France reports that the presence of the lawyer is permitted for all interviews by the police and cross-interrogations, unless the questioning is related only to identity matters (which can be difficult in case of proceedings regarding false identity).

Only the Czech Republic and Sweden report that the defence lawyer can be excluded from the proceedings even during the trial stage (in the Czech Republic 'exceptionally, due to important grounds'). In Sweden, the suspect has an unrestricted right to be assisted during any court proceedings. However, if the lawyer is a private defence counsel, the right to meet in private and communicate, and the right to access to a lawyer during police questioning can be derogated from under certain circumstances even after an indictment has been submitted to court.

Only Sweden reports on differing treatment, depending on whether the lawyer is a public defender or privately appointed by the client.

As for whether the temporary derogation is everywhere reasoned and subject to judicial authorisation, most Member States do not report a problem. But there are the following exceptions:

- Austria - there is a gap in the judicial review process until the suspect is brought to prison, because the police may take the decision to prevent full contact with the lawyer and/or to supervise the contact with the lawyer. Although this decision of the police may be challenged, this is only an ex-post review.

- Belgium – there is no specific and dedicated appeals process against the decision. It is only at the later stages of the proceedings that the suspect will have the opportunity to appeal against the decision, but it is after the event.

- Finland – the head of the investigation makes the decision, without the possibility of appeal.

- France - during the first 24 hours of deprivation of liberty, only the prosecutor has the jurisdiction to determine whether or not a derogation should apply. However, as stated in the *Moulin* case before the European Court of Human Rights (*Moulin vs France*, 23 November 2010, n° 37104/06), the prosecutor as a party to the proceedings cannot intervene as an impartial judge concerning the liberty of the suspect or accused.

- Ireland - the authorisation process is opaque and is entirely a decision made by the police authorities themselves, without outside supervision or judicial review. A person in custody may apply to the High Court for protection pursuant to article 40 (4) of the Constitution. These applications are routinely made in circumstances where the conditions of a person's detention are viewed as being unfair or oppressive.

- Malta – this point is not regulated by law, and should be.

- Poland - decisions concerning the application of derogations are not submitted to judicial review.

- Sweden - a decision to refuse access to a lawyer during interrogation is generally taken by the prosecutor. This decision must be documented, and can be reviewed by a higher prosecutor. There is no provision ensuring reasoning of the decision. A decision to refuse a meeting in private with a privately appointed lawyer is generally taken by a prosecutor. There are no provisions ensuring reasoning or documentation of the decision. This decision can be reviewed by court.

Theme 3 – confidentiality

Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

Recital 34 of the directive states that the provisions of the directive are without prejudice to a breach of confidentiality which is incidental to either a lawful surveillance operation by competent authorities, or work that is carried out, for example, by national intelligence services to safeguard national security with the aim of maintaining law and order and the preservation of internal security.

Most Member States report that their current legislation will require no changes to the rules on confidentiality when the directive is implemented nationally. The exceptions are:

- Austria - the communication may be supervised if the suspect is deprived of liberty because of "danger of collusion". The prosecutor has to order the supervision in writing and with reasons. The supervision must be open, and is limited to a period of two months. Even though there is the

possibility to take remedies ex post, the supervision is a threat to an effective defence, since it is impossible to devise a defence strategy and to discuss the case freely for a period of up to two months without effective and quick remedies against such a supervision.

- Belgium – the permitted confidential meeting between a lawyer and client is limited to 30 minutes in the case of a suspect deprived of liberty. This should be extended, maybe to 1 hour, particularly if the suspect does not speak the language of the lawyer.

- Bulgaria - the right to meetings in private is formulated as a right of the defence lawyer and not as a right of the accused. This formal flaw does not affect in practice the effective exercise of the right to meetings in private.

- Estonia - the laws covering surveillance and wire-tapping do not expressly provide for a ban on listening in to lawyer-client communications, and in practice it is not uncommon that such communications are intercepted. The practice is generally justified by stating that the authorities had proper authorisation to intercept the communications, and that interception was inevitable for technical reasons. The government believes that a ban on use of the information as evidence in criminal proceedings is sufficient to guarantee the right to confidentiality. But this is not so, because the right to confidentiality is breached by the mere possibility of interception, and, despite the ban on use of the information as evidence, the government has in fact tried to circumvent the ban, and to use intercepted lawyer-client communications as evidence.

- Ireland – it was for many years the policy to record all telephone conversations between Garda Stations and members of the public, including potentially conversations between suspects and their lawyers.

- Luxembourg - a problem could arise in the case of linguistic problems between lawyer and client, because the translator present at their confidential interview will also have to translate the declarations made by the client at the police station or at the hearing before the judge.

- Poland – as mentioned before, there are problems around the possibility of a prosecutor or police official to be present during a communication between a lawyer and client, as well as around a prosecutor's decision to supervise their correspondence.

- Slovakia – a suspect or accused in custody shall not be permitted to speak on the telephone with his or her lawyer without the presence of a third person

- Spain - in practice, there are some situations where confidentiality is at risk, namely, in fishing expeditions (indiscriminate searches) in lawyers' offices in relation to money laundering or tax crimes. Is not unusual that the authorities which conduct the search take dozens of files, regardless of whether the client is related to the crime or not. Even if the client is a suspect, taking the evidence against him/her from the lawyer's file is a breach of confidentiality.

- Sweden – as mentioned before, if a private lawyer is appointed (and not a public defender), there are limitations on electronic communications and correspondence. The communications may also be tapped, but the suspect and the lawyer must be informed in advance. Correspondence may, in exceptional situations due to security reasons, be examined, if admitted by the suspect.

There is not much experience among the respondents of communications being subject to surveillance, apart from the Netherlands and Spain (see below). The examples given from Estonia and Ireland are listed above, and the following Member States also reported:

- Croatia - there are prescribed exceptions to the right of confidentiality of lawyer-client communications if there is a danger that the communication could help client to compound or complete a crime. These exceptions exist for very serious crimes only (i.e. genocide, terrorism, murder, drug related crimes etc.)

- Greece - there are exceptions to confidentiality solely in order for very serious crimes to be detected (criminal organisations, terrorism, etc.). All operations must be authorised by the Judicial Council, which fully justifies these actions and defines the period of application of the exception. All these operations are supervised effectively by the competent Investigator and Prosecutor.

- Latvia - information gathered in this way is unusable as evidence.

- Lithuania - the information cannot be used in criminal proceedings.

- Netherlands - in April 2014, the law firm Prakken d'Olivieira, which had been wiretapped by the Dutch Intelligence Service (AIVD), filed a complaint against the AIVD for the wiretapping of lawyers associated with the firm. The court action was against both the Minister of the Interior and the Minister of Defence (AIVD being a part of that), in order to introduce a prior judicial authorisation for each surveillance procedure involving lawyers. The Court of Appeal ruled in October 2015 that the Dutch government must stop within six months all interception of communications between clients and their lawyers under the current regime. The Dutch State was given six months to adjust the policy of its security agencies regarding the surveillance of lawyers, and to ensure that an independent body would exercise effective prior control. The Court also ruled that information obtained from surveillance of lawyers may only be released to the public prosecutor if an independent body has examined if, and under what conditions, security agencies were allowed to conduct surveillance. The Court held that the current safeguards were inadequate in view of the case law of the European Court of Human Rights.

- Poland - the issue of surveillance of lawyers by national intelligence services exists in Poland

- Slovakia - no information obtained in this way may be used for the purposes of criminal proceedings, and must be immediately destroyed in a prescribed manner, provided that the lawyer-client communication did not occur in a place accessible to the public

- Spain - in 2012, the Supreme Tribunal sentenced the famous judge Baltasar Garzon because he had tapped conversations between the suspect and his lawyer in prison

Theme 4 – waiver

Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure that, in relation to any waiver of a right of access to a lawyer:

(a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and

(b) the waiver is given voluntarily and unequivocally.

The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure in accordance with the law of the Member State concerned.

Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings and that they are informed about that possibility. Such a revocation shall have effect from the moment it is made.

The following Member States report that they do not need to change their legislation regarding the provision of information about the waiver - Austria, Belgium, Croatia, Finland, Greece, Hungary, Ireland, Latvia, Poland, Slovenia, Sweden. However, some of these Member States require amendments in other parts of their laws relating to waivers and their revocation.

Vulnerable people and other concerns

Finland makes the point – which must have resonance everywhere - that vulnerable people especially, but also others, may not fully understand the meaning of being assisted by a lawyer in the first place. People who have not been interrogated by the police previously may not understand what they are waving. Finland mentions a recent case where, even though an application for a public defender was already pending, the suspect waived his right to a lawyer – and then confessed without a lawyer being present.

Estonia and Luxembourg propose that, ideally, waivers should be acceptable only when given after consultation with a lawyer.

Luxembourg also thinks that the information should be given in writing, to allow the suspect or accused to understand it better, by consulting it at any time.

Ireland reports that there is concern among defence practitioners at the extent of the instances of police advising suspects that they are entitled to have a solicitor present during questioning but it will take several hours to put that in place, and therefore by implication the person's detention will be extended solely on that account. (Finland also reports on cases where a suspect is told that he or she will have to wait a long time for a lawyer.) Ireland proposes that it would be preferable if there was a strict rule requiring the importance to the person of having a solicitor present being outlined to them, and audio-visually recorded so that any waiver was clearly recorded. Finland similarly mentions that video-taping the waiver would be a good idea to be sure that the waiver is given voluntarily and without undue pressure.

In Spain, the suspect or accused can waive his/her right only regarding traffic offences, after having received clear information about it. But the law does not provide that this information has to be given by a lawyer- the one who gives the information is a police officer or clerk of the Court.

Evidence of the voluntary and unequivocal nature of the waiver

A number of Member States report how difficult this is to achieve when both the information to be given, and the waiver, need not be in writing.

In Estonia, the waiver must be in writing, and in Lithuania, the waiver has to be signed, but the respondents point out that even so this is hardly sufficient evidence regarding the voluntary and unequivocal nature of it. Again, audio or video evidence is preferred.

Ireland points out that it would be desirable if each interview began with a reminder to the detained person of their entitlement to have a lawyer present, along with a requirement that the waiver be repeated if insisted on.

Luxembourg repeats in this context that the waiver should be in writing and signed by the suspect or accused in the presence of a lawyer who would have explained the rights, and the consequences of waiver.

Netherlands reports that what could pose problems in practice is knowing under what circumstances the suspect waived the right and what information was been given to the suspect in this regard (in addition to the information in the letter of rights). This is, in most cases, not recorded in the official transcript of the police interview. In other words: in practice, it can be difficult to assess whether the waiver was voluntary, well informed and unequivocal.

It seems that the waiver is recorded everywhere. (In Greece, it is recorded for misdemeanours in the Greek language, and so there is no way of knowing whether a non-Greek speaker has understood the consequences.)

Changes needed

The following report that changes will have to be made to their current law:

- Austria - the suspect is not informed about the right to revoke the waiver regarding seeking the assistance of a lawyer

- Belgium – there is currently no possibility of revoking the waiver

- Bulgaria – the current rule simply states: “The accused person may refuse to have a counsel for the defence at any time during the proceedings”. This is insufficient from the viewpoint of the standards of the directive.

- Cyprus - the current legislation must be amended to include a provision that the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the possible consequences of waiving the right.

- Czech Republic - the current legislation complies in principle with the directive´s conditions, but the wording could be made more precise. The suspect or accused is not able to waive the right to a lawyer a second time.

- Estonia - there is no provision in the national Code on providing information to the suspect or accused on the right concerned and the consequences of waiving it, nor on revocation of the waiver. In practice, waivers are common during pre-trial investigation proceedings, and in the majority of cases, no proper information is given to suspects about their need for a lawyer nor the consequences of waiving the right. It is not uncommon to hear of cases where suspects have been effectively induced by the police to waive, through hints about delays in proceedings, costs, ineffectiveness of lawyers, etc. Both the law and practice must change. Ideally, waivers should be acceptable only when given after consultation with the lawyer. It is unlikely, however, that our government would be ready to adopt such measure

- Greece – no information is given to the suspect or accused about the right to revoke the waiver (even though in practice they can revoke the waiver).

- Italy - There is no provision about waiver of the rights.

- Lithuania - the requirement to inform the suspect in written form about the waiver of the right of access a lawyer and the right to revoke a waiver should be envisioned in national law.

- Luxembourg – the information is not given in due time.

- Netherlands - there is no provision in the law on providing information to the suspect or accused on the right and the consequences of waiving it. In practice, waivers are common during pre-trial investigation proceedings, and in the majority of cases, no proper information is given to suspects about their need for a lawyer nor the consequences of waiving this right.

- Poland – no specific provisions about waiver and its consequences, and at present the rights depends on interpretation of other clauses.

- Portugal - there is no information about the possible consequences of giving a waiver.

- Slovakia - no information is given on the possible consequences of the waiver.

- Sweden – there is no express provision covering the directive's requirements, but since the directive implements the case-law of the European Court of Human Rights on the matter, it is already a part of Swedish law. It would be better to have specific provisions.

Theme 5 – the right to have a third person informed of the deprivation of liberty

Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish.

If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child.

Member States may temporarily derogate from the application of the rights set out in the above two paragraphs where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

Where Member States temporarily derogate from the application of the right set out in the second paragraph above, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child.

As with all the other rights, many Member States have existing provisions in their current laws. Some indeed go beyond the directive in some respects – for instance, Bulgaria reports that the right is to be exercised 'promptly', which may be read as a higher standard than 'without undue delay'.

The following report that changes will have to be made:

- Bulgaria - the law requires that the holder of parental responsibility over the child is to be informed of the deprivation of liberty only, but not of the reasons for it.

- Belgium - the existing provision does not stipulate that the right to have a third person notified of the deprivation of liberty should be able to be exercised without undue delay.

- Estonia - a new rule must be adopted which provides for the obligation to inform the holder of parental responsibility of the child, unless it would be contrary to the best interests of the child.

- Finland - the legal framework seems good, but the practice of imposing restrictions on contacts with third persons often takes advantage of the too general wording for permitting such restrictions ('weighty reasons'). In the Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (http://www.cpt.coe.int/documents/fin/2015-25-inf-eng.pdf), CPT recommended the following: 'Regarding notification of custody, although many detained persons confirmed that they had been able to have their next-of-kin informed shortly after apprehension, the delegation noted that delays in such notification remained frequent and widespread, and could last up to several days, especially when the apprehended person was a foreign national without residence in Finland.'

- France - during custody, the right to inform is limited to a time schedule of 3 hours except in case of insurmountable circumstances. When imprisoned, the person has no specific right to inform third parties, especially because of the secrecy duty during judicial investigations.

- Greece - third persons are not informed, only the parents of minors.

- Ireland - when a young person is detained, rather than having their relation or parent attend with them during questioning, an independent outside responsible adult is generally selected. This is done on the basis that the parent might be in some way involved in the child's offending, but in reality the parent will likely be much more solicitous of the child's welfare than the "responsible adult", who is generally a person who is on good terms with the police.

- Italy – no third person notification, except for children

- Luxembourg - police officers apply standard and vague phrases in order not to grant the possibility to inform a third person about the deprivation of liberty.

- Malta – more immediate access to this right would be desirable

- Poland - there are no separate and clear provisions relating to the application of the right to a child suspect or accused who is deprived of liberty

- Slovakia – the right can be exercised only in case of detention (custody), not mere arrest of a suspect.

- Sweden - In order to comply with the directive, there is a need for clarification that the suspect´s right to have a third person informed must be exercised without undue delay. In addition, there is a need for clarification that the custodian is entitled as soon as possible to information about the

deprivation of liberty, and that he or she is entitled at the same time to information of the reasons behind the decision.

Regarding a minor, Finland points out that a lawyer/public defender should always be appointed when the suspect is under age, at least in cases where deprived of liberty. Finnish law states that the investigation authority needs to file an application to court for a public defender only if this is considered proper when considering the possibilities of assigning a public defender. At present, this happens on the request of the suspect. But it should be made mandatory when deprived of liberty.

Theme 6 - the right to communicate with third persons

Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them.

Member States may limit or defer the exercise of this right in view of imperative requirements or proportionate operational requirements.

Some Member States already have this right (Austria, Bulgaria, Croatia, Cyprus, Ireland, Slovenia), and others will have to introduce it (Belgium, Czech Republic, Italy and Latvia).

In other Member States, the right exists, but needs to be changed in some way:

- Estonia – the communication is at present effected by a police officer at the request of the suspect or accused, rather than by the suspect or accused personally; the limitations or deferrals will also have to be introduced.

- France - during custody, the detained person has no right to communicate directly with a third person but has the right to inform a third person. When imprisoned, the person has no specific right to inform third parties, especially because of the secrecy duty during judicial investigations.

- Lithuania - the law should make clear that the right to communicate with the third person can be exercised without undue delay

- Luxembourg – the right is much too restricted now. For instance, no reasons for maintaining a person under a regime without the possibility of communication are given.

- More immediate access to this right is desirable.

- Poland - the law should make clear that the right to communicate with the third person can be exercised without undue delay

- Portugal - the right should be able to be exercised before the first questioning (or at the moment of deprivation of liberty).

- Slovakia - the time is not explicitly stated.

- Sweden - the law should make clear that the right to communicate with the third person can be exercised without undue delay

The right needs to be introduced in the Netherlands (even if there are no general restrictions on communications with third persons).

Theme 7 – remedies

Member States shall ensure that suspects or accused persons in criminal proceedings have an effective remedy under national law in the event of a breach of the rights under this Directive.

Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with the second paragraph of Theme 2, the rights of the defence and the fairness of the proceedings are respected.

Right of access to a lawyer

Most Member States had no problem regarding a remedy for the breach of the right of access to a lawyer, and no changes were needed. (Of course, where Member States reported that a particular right did not yet exist in their Member State, there was no remedy for breach of that right.)

Austria pointed out that the problem with any remedy is that it is an *ex post facto* review of the breach of the right to contact a lawyer, and the remedy therefore has only a very limited effect. Sweden also pointed out that breach of the right of access to a lawyer may lead to irreparable damage, while a decision to refuse contact with a third person can be reviewed and remedied by the court.

Spain said that regarding a police arrest, the only remedy available is '*habeas corpus*', which is, generally speaking, ineffective, because the Courts normally dismiss the petition '*ab limine*'. Special provision is necessary, including the option for a lawyer to making use directly of a remedy. In addition, it would be recommendable that the judge admits such a petition by electronic means.

Assessment of statements made by suspects or defendants in breach of the right to a lawyer

Of course, the wording is very vague in the directive about what should happen to such statements. It does not say clearly that the statements should be inadmissible as evidence, only that the rights of the defence and the fairness of the proceedings should be respected .

Austria favoured that the evidence gathered after the breach should be inadmissible in the subsequent proceedings.

The following are the only Member States which reported that such evidence is already clearly inadmissible: Belgium, Bulgaria, Netherlands, Latvia, Slovakia and Spain.

There were the following glosses:

- Ireland - the observations of the Supreme Court in the joint cases of *White and Gormley* are clearly to the effect that the Courts will look with increasing scepticism on supposed voluntary statements made in the absence of legal advice. The Gardai are themselves aware of this development, and have issued guidance to their members accordingly.

- Slovakia - in cases not involving mandatory counsel, breach of the right to a lawyer is sometimes difficult to prove. Information gained from the tapping of telephone calls or seizure of correspondence between the accused and the counsel cannot be used for the purpose of criminal process and must be destroyed. The evidence gained from inspections, searches, seizures or wiretapping carried out with the use of force or threat of force can only be used against the person who has used force or the threat of force.

Regarding the assessment of statement where a derogation of the right to a lawyer was authorised, there was not much useful information provided, often because the Member State did not allow such a derogation in the first place (Bulgaria, Cyprus, Estonia, Greece, Hungary, Latvia, Lithuania and Netherlands).

Ireland reported what is probably true for all those Member States which permit a derogation: where a lawyer has been requested by the suspect or defendant, and this request has been denied, it is likely that the courts will be especially keen to ensure that any resultant statement is genuinely voluntary. The courts would be very aware of the public policy importance of not creating a temptation for police to grant themselves derogations improperly, with the object of securing statements that otherwise would not become available to them.

Theme 8 – the European Arrest Warrant

(i) Executing Member State

Member States shall ensure that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant.

With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing them;
the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.

The following rights listed above (confidentiality, right to have a third person informed, right to communicate with a third person, the conditions for a derogation and waiver, plus the right to communicate with consular authorities), and, where a temporary derogation under the third paragraph of Theme 5 is applied, shall apply, mutatis mutandis, to European arrest warrant proceedings in the executing Member State.

(ii) Issuing Member State

The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

Where requested persons wish to exercise the right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in the executing Member State shall promptly inform the competent authority in the issuing Member State. The competent authority of that Member State shall, without undue delay, provide the requested persons with information to facilitate them in appointing a lawyer there.

The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

The right to a lawyer in the executing Member State if your Member State is the executing Member State

All respondents reported that their Member States were already compliant with this measure (although the Netherlands reported that it should be formalised in the law).

The right to a lawyer in the issuing Member State if your Member State is the issuing Member State

Changes to existing law are reported as being needed in the following Member States: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Greece, Ireland, Lithuania, Luxembourg, Malta, Poland and Sweden.

The Netherlands points out that it depends, at least formally, on what kind of European Arrest Warrant has been issued. There is no problem with a Warrant issued for the purposes of prosecution. But if it is a Warrant for execution of a final judgement, then the accused is considered in a different category, no longer a suspect or accused, but a convicted person, and then has very limited rights. However, this may be more of a formal problem than one encountered in practice since the Dutch authorities might be willing to provide the relevant information in such circumstances.

The right to a lawyer in the issuing Member State if your Member State is the executing Member State

The following Member States reported that there was no existing provision for this in their law – Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Ireland, Italy, Lithuania, Luxembourg, Poland, Slovenia and Sweden.

Ireland reports on regularly occurring cases where a defendant who is privately funded and has access to lawyers in the requesting State is in a position to put more information before the Irish court than a person who is reliant solely on the court-appointed Irish lawyer. This leads as a minimum to a delay in proceedings where questions in respect of the law of the requesting State need to be channelled by the court through the executing Member State's lawyers back to the lawyers for the government in the requesting State. On the contrary where a person has joint representation, privately funded of course, the answers to such questions can generally be procured very quickly, leading to a more satisfactory disposition of the proceedings within a shorter time frame, particularly important if the detained person has not been given bail.

Netherlands points out that the Letter of Rights does not mention the right of the suspect or accused to appoint a lawyer in the issuing Member State.

The use of a European Supervision Order (ESO)

The following report that the ESO has been implemented in their Member States - Austria, Czech Republic, Finland, Lithuania, Malta, Portugal, Slovakia and Slovenia.

The following report that it has not yet been implemented – Belgium, Cyprus, Estonia, Latvia, Spain and Sweden.

General questions

Has the directive brought important changes on the right of access to a lawyer in the legislation and practice of your Member State?

The following Member States report that the directive has not yet been implemented - Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Slovakia, Slovenia and Sweden

What are the main aspects that could be improved, both at EU and national level?

EU level

Waiver

- Austria and Netherlands - a major improvement would be mandatory contact with a lawyer before waiving the right to have a lawyer present at the interrogation of the suspect. In practice, the police often put pressure on the suspect to waive the right to a lawyer. In order to prevent such practice, the suspect should have (at least phone) contact with a lawyer (otherwise the interrogation should be unlawful) and the complete interrogation should be taped (video and/or audio).

- Estonia - ideally, waivers should be acceptable only when given after consultation with the lawyer. In addition, the only rule is that the waiver must be in writing. This is hardly sufficient evidence regarding the voluntary and unequivocal nature of a waiver. Both law and practice need to improve on this matter. One solution could be a requirement to have audio or audio-visual recording of the provision of information about the waiver, and the suspect's statement that he or she wishes to exercise the waiver.

- Ireland - it would be desirable for each interview to begin with a reminder to the detained person of their entitlement to have a lawyer present, along with a requirement that the waiver be repeated if insisted on.

- Luxembourg - there should be a written waiver signed by the renouncing person in the presence of a lawyer, who would assist during this procedure after once more having explained the procedural rights to the person under procedure. Such a practice would make sure that there would be no more litigation concerning this point.

- Sweden - it is important that proper training is continuously is provided, ensuring that the handling of a waiver is carried out in compliance with the requirements of the Directive.

Legal Aid

- Sweden – an EU legislative act on legal aid would be an important measure to ensure the right of access to a lawyer.

Scope

- Cyprus - the directive's scope should extend not only to suspects and accused persons but also to every person that is questioned by the police (or any other competent authority), even though at the time they are not suspected or accused, because during police questioning the person that is being questioned may say something that will incriminate himself or herself. Also the directive

should apply when a person is not yet a suspect or accused person, but there is court order for search of his or her premises.

European Arrest Warrant

- Cyprus - the Letter of Rights in European Arrest Warrant proceedings should be modified so that the "Rights for Persons Arrested on the basis of a European Arrest Warrant" document contains the right to remain silent and the right of free legal aid or assistance and the conditions required for such assistance.

Police guidelines

- Spain – it would be helpful for there to be general guidelines for all police in the EU in relation to suspects' and accused persons' right to meet in private with a lawyer before making statements.

National level

- Cyprus - an important change will be the provision guaranteeing to all detainees the right to have their lawyer present during police questioning. Currently, the legislation does not provide for the presence of a lawyer during police questioning except if the person to be interviewed is under 18 years of age or suffers from mental incapacity.

- Cyprus - there should be a law based solely on the directive to avoid any conflicting provisions and have a unified legislation which provides clear provisions about the right of access to a lawyer, including the right of access to a lawyer for the suspect before arrest.

- Greece - to enable telephone communications with prisoners, on the initiative of the lawyer. In practice, the lawyer cannot summon the detainee nor notify him or her of anything, unless the lawyer goes to the prison. There should be better conditions for communication between lawyers of detainees in detention centres and an enlargement of their visiting time.

- Luxembourg – the right of access to a lawyer, which is the objective of the directive, makes sense only if the lawyer is granted full access to the case file before meeting the person he or she is supposed to "effectively assist". If the assistance of a lawyer in pre-trial proceedings will in future be limited to the nomination alone along with the single prerogative to inform the person under proceedings of the right to keep silent, then the contribution of the directive to the effectiveness of defence rights is rather poor.

- Malta – the prosecution should inform the defence lawyer immediately of the time and date of the arraignment.

- Netherlands - currently the law does not provide for the presence of a lawyer during police questioning, except if the person to be interviewed is under 18 years of age or suffers from mental incapacity. The presence of a lawyer during questioning will safeguard the suspect or accused from undue pressure and/or oppression by the police, and will enhance the protection of the right against self-incrimination.

- Spain - the right to communicate with a third person has not been implemented in our law. In addition, at national level, it would be important to underline:

  1) an Organic Law on the right to defence is strongly desired

2) this Law would help to formulate a '*habeas corpus'* system more swiftly and efficiently

3) the legal profession/national Bar should be present in the states bodies which issue action protocols for State Security Forces and Corps; and

4) it would be desirable for there to be unified criteria for all Spanish State Security Forces and Corps as regards rights and guarantees of accused and suspects.

Good practices

Not only defence lawyers

- Belgium - Some Belgian investigating magistrates or prosecutors allow, on request by the person concerned or his or her lawyer, that the lawyer of the victim, of a person questioned for information or a witness may be present during the questioning of the client. The directive should extend the right of the presence of the lawyer also to the lawyer of victims, those questioned for information or witnesses during their interviews, since these categories of people may also be subject to abuse, pressures or unfair attitudes of interviewers.

Communication with third persons

- Bulgaria - an example of a good legislative approach and good practice comes from the provision relating to the right of the accused to communicate with third persons during detention. The scope of third persons with whom the accused may communicate is expanded beyond the scope of the directive to international experts, who may visit detainees in compliance with the international treaties to which Bulgaria is a party. Communications are also possible, if the third persons are representatives of human rights NGOs or religious NGOs, or representatives of the mass media, but on condition that the communications with these representatives have been already permitted in writing by the prosecutor or the court.

Complaints against the police

- Cyprus - the establishment of the Independent Authority for the Investigation of Allegations and Complaints Against the Police (IAIACAP) is a good practice because even though we have more or less the legal framework demanded by the European Union, in reality there are problems in complying with the law. The inclusion of the right to communicate with IAIACAP and also an expansion of the current IAIACAP which will include permanent criminal investigators, translators, photographers and other personnel, will increase the confidence of the public that the police are under constant scrutiny and that they comply with all the provisions of the law.

Waiver

- Estonia - our law does not provide for any derogations from the right to access a lawyer (and this rule is widely accepted in practice without any complications). This is certainly something that other Member States should consider.

Lawyer's right to communicate with the suspect or defendant

- Slovenia - a lawyer can meet the client at every phase of the criminal procedure (even when the defendant is in police custody). There are no time limits or specific days when a lawyer can meet with the defendant who is in jail or police custody. The state will also provide for an interpreter if the need arises, and the interpreter will accompany the lawyer on the visit to jail or police custody.

Annex 1

List of respondents and Member States

Austria	Rupert Manhart
Belgium	François Koning
Bulgaria	Dinko Kanchev
Croatia	Lovro Kovacic
Czech Republic	Miroslav Krutina
Cyprus	Orestis Nikitas
Estonia	Jaanus Tehver
Finland	Jussi Sarvikivi
France	Florent Loyseau de Grandmaison
Greece	Panos Alexandris
Hungary	Gyalog Balázs
Ireland	James MacGuill
Italy	Laura Autru Ryolo
Latvia	Janis Rozenbergs
Lithuania	Ingrida Botyrienė
Luxembourg	Roby Schons
Malta	Mario Spiteri
Netherlands	Han Jahae
Poland	Piotr Chrzczonowicz
Portugal	Paulo de Sá e Cunha
Slovak Republic	Ondrej Laciak
Slovenia	Mitja Jelenič
Spain	Salvador Guerrero Palomares
Sweden	Jonas Tamm
England & Wales	Ben Brandon
Scotland	Laura Thomson
Northern Ireland	Martin McCallion

Annex 2

Final versions of the questionnaires

QUESTIONNAIRE

Implementation of directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

INSTRUCTIONS

(1) This questionnaire needs to be returned to Jonathan Goldsmith (goldsmith@ccbe.eu) by 30 September 2015. Please respect the time limit, because a report needs to be written based on all questionnaires within a strict time limit.

(2) Please answer all questions, including sub-questions which sometimes follow a main question. If you have no information in respect of a particular question, please write 'No information'.

(3) Most of the questions in this questionnaire begin with the phrase 'What is the situation in your Member State – covering both national law and national practice - with respect to …' This is aimed at eliciting from you a description of how national law and national practice have implemented a particular provision of the directive – Do they go further than the directive? Do they omit certain parts? and so on. You are not just expected to describe a particular aspect of implementation, but give your opinion of it. In principle, you are asked to focus on practices which show in a systematic way how the directive has been implemented in your Member State.

(4) An important part of the eventual report on the implementation of this directive will consist of good practices and recommendations for improvements to the directive itself and to its implementation. If, for any question, you have examples of good practice or recommendations for improvement, please insert them. Good practices include initiatives which go in a helpful direction beyond the requirements of the directive itself, or which implement provisions which are not binding in the directive (for instance, relating to quality).

(5) Another important part of the eventual report will be its geographical coverage in your Member State. Your answers are expected to cover your whole jurisdiction. To assist you, it may be helpful for you to submit the questionnaire (or your draft answers) to others, in particular relevant committees of your bar, or to other competent authorities, such as the police, judges and prosecutors.

(6) For reasons of size, this questionnaire focuses on certain themes in the directive, rather than on each article. If you have useful information or good practices about a part of the directive regarding which there is no question, please put your information in the 'General comment' section at the end.

(7) The English text of the directive is attached. If you want to read the directive in your own language, please go to the following link for all language versions: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0064.

QUESTIONS

Theme 1 - right to interpretation

The right to interpretation in criminal proceedings shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected 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.

Member States shall ensure that a procedure or 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.

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

Question 1.

What is the situation in your Member State – covering both national law and national practice - with respect to the right to interpretation regarding:

(a) communications between the suspect or accused and the competent authorities in the Member State? are there any points to raise in particular regarding:
- *i. the time of provision (e.g. "without delay")?*
- *ii. the stages for which provision is made (e.g. all the proceedings mentioned)?*

(b) communications between the suspect or accused and their legal counsel? are there any points to raise in particular regarding:
- *i. the occasion for which provision is made (e.g. all the proceedings mentioned)?*

(c) the procedure or mechanism for ascertaining understanding of language?

(d) the right to challenge a decision or complain about quality?

Theme 2 - right to translation

The right to translation shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

The competent authorities shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect.

There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

As an exception to the general rules, 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.

Any waiver of the right to translation of documents referred to in this Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

Question 2.

What is the situation in your Member State – covering both national law and national practice - with respect to the right to translation regarding:

(a) what documents are translated in your Member State? do they include any decision depriving a person of his liberty, any charge or indictment, and any judgment? are they provided in a reasonable time?
(b) how the decision is made on what other documents are essential? who takes that decision? who can apply for such a decision? whether such decisions include documents relating to a right to appeal?
(c) decisions regarding partial translation of documents?
(d) challenges to the decisions made in (a), (b) and (c) above?
(e) are there oral translations or oral summaries of essential documents? in what circumstances?
(f) whether the right to translation can be waived? under what circumstances? whether a waiver can be be revoked?

Theme 3 – quality of interpretation and translation

Interpretation and translation (as outlined in the previous themes) shall be 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.

Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required.

In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

Question 3.

What is the situation in your Member State – covering both national law and national practice - with respect to the quality of interpretation and interpretation regarding:

(a) whether the quality is sufficient to safeguard the fairness of the proceedings?
(b) concrete measures taken to ensure quality?
(c) access by lawyers to registers of independent translators and interpreters which have been established (if any)?

Theme 4 – record keeping

Member States shall ensure that when:

(a) a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter
(b) when an oral translation or oral summary of essential documents has been provided in the presence of such an authority, or
(c) when a person has waived the right to translation

it will be noted that these events have occurred, using the recording procedure in accordance with the law of the Member State concerned.

Question 4.

What is the situation in your Member State – covering both national law and national practice - with respect to record keeping regarding:

(a) questioning or hearings with the assistance of an interpreter?
(b) oral translation or oral summary of essential documents?
(c) waiver of the right to translation?

Theme 5 – costs of interpretation and translation

Member States shall meet the costs of interpretation and translation resulting from the application of the rights to interpretation and translation, irrespective of the outcome of the proceedings.

Question 5.

What is the situation in your Member State – covering both national law and national practice - with respect to costs regarding:

(a) whether all costs are met by your Member State? if not, which costs are not met?
(b) whether your Member State meets the costs directly or indirectly (e.g. through a recovery procedure)?

General questions

Question 6.

Has the directive brought important changes on the right to interpretation and translation in criminal proceedings in the legislation and practice of your Member State? what are the main aspects that could be improved, both at EU and national level?

Question 7.

Do you have comments on an article of the directive not covered by any of the questions above?

Question 8.

Do you have any good practices to pass on, that you have not already mentioned? (N.B. This question is particularly important, given that one of the sections of the final report will focus on good practices.)

QUESTIONNAIRE

Implementation of directive 2012/13/EU on the right to information in criminal proceedings

Instructions

1) This questionnaire needs to be returned to Jonathan Goldsmith (goldsmith@ccbe.eu) by 30 September 2015. Please respect the time limit, because a report needs to be written based on all questionnaires within a strict time limit.

2) Please answer all questions, including sub-questions which sometimes follow a main question. If you have no information in respect of a particular question, please write 'No information'.

3) Most of the questions in this questionnaire begin with the phrase 'What is the situation in your Member State – covering both national law and national practice - with respect to …' This is aimed at eliciting from you a description of how national law and national practice have implemented a particular provision of the directive – Do they go further than the directive? Do they omit certain parts? and so on. You are not just expected to describe a particular aspect of implementation, but give your opinion of it. In principle, you are asked to focus on practices which show in a systematic way how the directive has been implemented in your Member State.

4) An important part of the eventual report on the implementation of this directive will consist of good practices and recommendations for improvements to the implementation of the directive. If, for any question, you have examples of good practice or recommendations for improvement, please insert them. Good practices include initiatives which go in a helpful direction beyond the requirements of the directive itself, or which implement provisions which are not binding in the directive (for instance, relating to quality).

5) Another important part of the eventual report will be its geographical coverage in your Member State. Your answers are expected to cover your whole jurisdiction. To assist you, it may be helpful for you to submit the questionnaire (or your draft answers) to others, in particular relevant committees of your bar, or to other competent authorities, such as the police, judges and prosecutors.

6) For reasons of size, this questionnaire focuses on certain themes in the directive, rather than on each article. If you have useful information or good practices about a part of the directive regarding which there is no question, please put your information in the 'General comment' section at the end.

7) The English text of the directive is attached. Given the importance of the recitals for understanding the meaning of the articles, the relevant recital numbers are listed against each article to which they refer. (If you want to read the directive in your own language, please go to the following link for all language versions:http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013

Questions

Theme 1 – right to information on procedural rights

General

This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.

(i) Not deprived of liberty

Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

(a) the right of access to a lawyer;

(b) any entitlement to free legal advice and the conditions for obtaining such advice;

(c) the right to be informed of the accusation;

(d) the right to interpretation and translation;

(e) the right to remain silent.

Member States shall ensure that this information shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

Question 1.

What is the situation in your Member State – covering both national law and national practice - with respect to the right to information on procedural rights regarding:

(a) the time when it is provided (i.e. promptly)?

(b) at which stage it is provided?

(c) the items on which information is provided (i.e. all the rights listed above)?

(d) the means through which it is provided (e.g. orally or in writing, in suitable language, the needs of the vulnerable included)?

(ii) Deprived of liberty

Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

In addition to the information set out in (a) to (e) above, the Letter of Rights shall contain information about the following rights as they apply under national law:

(a) the right of access to the materials of the case;

(b) the right to have consular authorities and one person informed;

(c) the right of access to urgent medical assistance; and

(d) 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 basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

The Letter of Rights shall be drafted in simple and accessible language.

Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

Question 2.

What is the situation in your Member State – covering both national law and national practice - with respect to the Letter of Rights regarding:

(a) the time when it is provided (i.e. promptly)?

(b) at which stage it is provided?

(c) the items on which information is provided (i.e. all the rights listed above, including the possibility of challenge, review or request)?

(d) the language in which it is provided (e.g. simple and accessible, understood by the suspect or accused)?

Theme 2 – right to information about the accusation

(i) Not deprived of liberty

Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

(ii) Deprived of liberty

Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

General

Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given as above where this is necessary to safeguard the fairness of the proceedings.

Question 3.

What is the situation in your Member State – covering both national law and national practice - with respect to the right to information about the accusation regarding:

(a) the time when it is provided?

(b) the detail provided (the criminal act the person is suspected of; the lawfulness of detention; the accusation)?

(c) changes in the information?

Theme 3 – right of access to the materials of the case

General

Access, as referred to throughout this theme, shall be provided free of charge.

(i) Not deprived of liberty

Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

Access to the materials shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

Question 4.

What is the situation in your Member State – covering both national law and national practice - with respect to the right of access to the materials of the case regarding:

(a) access itself to the material?

(b) the time when it is provided?

(c) the quality and quantity of material provided?

(d) the way in which the access is granted (e.g. paper format, electronic format)?

(e) whether the access is granted to the lawyer or the suspected person or to both (if requested)?

(f) whether access is granted free of charge? if not or only partially, which costs arise?

(ii) Deprived of liberty

Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.

Question 5.

What is the situation in your Member State – covering both national law and national practice - with respect to the right of access to the materials of the case regarding:

(a) access itself to the material?

(b) the time when it is provided?

(c) the quality and quantity of material provided?

(d) the way in which the access is granted (e.g. paper format, electronic format)?

(e) whether the access is granted to the lawyer or the suspected person or to both (if requested)?

(f) whether access is granted free of charge? if not or only partially, which costs arise?

(iii) Derogation when not deprived of liberty

By way of derogation, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if:

(a) such access may lead to a serious threat to the life or the fundamental rights of another person or

(b) if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted.

Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this derogation is taken by a judicial authority or is at least subject to judicial review.

Question 6.

What is the situation in your Member State – covering both national law and national practice - with respect to the derogation from the right of access to the materials of the case regarding:

(a) the grounds on which the derogation is granted (see (a) and (b) above)?

(b) the effect of the derogation (i.e. prejudice the right to a fair trial)?

(c) the means by which the derogation is exercised (i.e. by a judicial authority or subject to judicial review)?

Theme 4 – verification and remedies

Member States shall ensure that when information is provided to suspects or accused persons in accordance with:

(a) the right to information about rights

(b) the Letter of Rights

(c) the right to information about the accusation

this is noted using the recording procedure specified in the law of the Member State concerned.

Question 7.

What is the situation in your Member State – covering both national law and national practice - with respect to record keeping regarding:

(a) the right to information about rights

(b) the Letter of Rights

(a) the right to information about the accusation

Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in accordance with this Directive.

Question 8.

What is the situation in your Member State – covering both national law and national practice - with respect to the right to challenge any possible failure or refusal to provide information?

General questions

Question 9.

Has the directive brought important changes on the right to information in criminal proceedings in the legislation and practice of your Member State? what are the main aspects that could be improved, both at EU and national level?

Question 10.

Do you have comments on an article of the directive not covered by any of the questions above?

Question 11.

Do you have any good practices to pass on, that you have not already mentioned? (N.B. This question is particularly important, given that one of the sections of the final report will focus on good practices.)

QUESTIONNAIRE

Implementation of directive 2013/48/EU on the right of access to a lawyer

INSTRUCTIONS

1) This questionnaire needs to be returned to Jonathan Goldsmith (goldsmith@ccbe.eu) by 30 September 2015. Please respect the time limit, because a report needs to be written based on all questionnaires within a strict time limit.

2) Please answer all questions, including sub-questions which sometimes follow a main question. If you have no information in respect of a particular question, please write 'No information'.

3) An important part of the eventual report on the implementation of this directive will consist of good practices and recommendations for improvements to the directive. If, for any question, you have examples of good practice or recommendations for improvement, please insert them. Good practices include initiatives which go in a helpful direction beyond the requirements of the directive itself, or which implement provisions which are not binding in the directive (for instance, relating to quality).

4) Another important part of the eventual report will be its geographical coverage in your Member State. Your answers are expected to cover your whole jurisdiction. To assist you, it may be helpful for you to submit the questionnaire (or your draft answers) to others, in particular relevant committees of your bar, or to other competent authorities, such as the police, judges and prosecutors.

5) For reasons of size, this questionnaire focuses on certain themes in the directive, rather than on each article. If you have useful information or good practices about a part of the directive regarding which there is no question, please put your information in the 'General comment' section at the end.

6) In principle, you are asked to focus on practices which show in a systematic way how the directive will be implemented in your Member State.

7) The English text of the directive is attached. Given the importance of the recitals for understanding the meaning of the articles, the relevant recital numbers are listed against each article to which they refer. (If you want to read the directive in your own language, please go to the following link for all language versions: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2013:294:TOC

QUESTIONS

Theme 1 - the right of access to a lawyer

The right of access to a lawyer applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

The right also applies, under the same conditions as provided for above, to persons other than suspects or accused persons who, in the course of questioning by the police or by another law enforcement authority, become suspects or accused persons.

Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

the right shall only apply to the proceedings before a court having jurisdiction in criminal matters.

In any event, the right shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:

(a) before they are questioned by the police or by another law enforcement or judicial authority;

(b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of the paragraph below;

(c) without undue delay after deprivation of liberty;

(d) where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

The right of access to a lawyer shall entail the following:

(a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;

(b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the Member State concerned;

(c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:

(i) identity parades;

(ii) confrontations;

(iii) reconstructions of the scene of a crime.

Question 1.

What changes need to be made in your Member State – covering both national law and national practice - with respect to the right of access to a lawyer regarding:

(a) the time of provision (e.g. without undue delay, before questioning etc)?
(b) the stages for which provision is made (i.e. all the stages and proceedings mentioned)?
(c) the manner of provision (e.g. allowing a practical and effective defence, in privacy etc)?

Theme 2 - derogations from the right

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the right to a lawyer under part (c) of the sixth paragraph of Theme 1 ('without undue delay after deprivation of liberty') where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in the last paragraph of Theme 1 ('The right of access to a lawyer shall entail the following') to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

Any temporary derogation under the above two paragraphs or under the third paragraph of Theme 5 shall

(a) be proportionate and not go beyond what is necessary;

(b) be strictly limited in time;

(c) not be based exclusively on the type or the seriousness of the alleged offence; and

(d) not prejudice the overall fairness of the proceedings.

Temporary derogations under the first two paragraphs of this Theme may be authorised only by a duly reasoned decision taken on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. The duly reasoned decision shall be recorded using the recording procedure in accordance with the law of the Member State concerned.

Temporary derogations under the third paragraph of Theme 5 may be authorised only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review.

Question 2.

What changes need to be made in your Member State – covering both national law and national practice - with respect to derogations from the right to a lawyer regarding:

(a) the circumstances in which temporary derogations are granted (i.e. only exceptional circumstances)?
(b) the stages of the proceedings at which temporary derogations are granted (i.e. only at the pre-trial stage)?
(c) the compliance of derogations with the four conditions in the third paragraph above?
(d) the authorisation process used for temporary derogations?

Theme 3 – confidentiality

(i) Article 4 of the directive

Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

Question 3.

What changes need to be made in your Member State – covering both national law and national practice - with respect to confidentiality regarding:

(a) the right to confidentiality itself?
(b) the communications covered by confidentiality?

(ii) Recital 34 of the directive

Recital 34 states that the provisions of the directive are without prejudice to a breach of confidentiality which is incidental to either a lawful surveillance operation by competent authorities, or work that is carried out, for example, by national intelligence services to safeguard national security with the aim of maintaining law and order and the preservation of internal security.

Question 4.

Do you have experience in your Member State – covering either national law or national practice or both - of exceptions to confidentiality in criminal proceedings in accordance with Recital 34?

Theme 4 – waiver

Without prejudice to national law requiring the mandatory presence or assistance of a lawyer, Member States shall ensure that, in relation to any waiver of a right of access to a lawyer:

(a) the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it; and
(b) the waiver is given voluntarily and unequivocally.

The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure in accordance with the law of the Member State concerned.

Member States shall ensure that suspects or accused persons may revoke a waiver subsequently at any point during the criminal proceedings and that they are informed about that possibility. Such a revocation shall have effect from the moment it is made.

Question 5.

What changes need to be made in your Member State – covering both national law and national practice - with respect to the waiver of the right of access to a lawyer regarding:

(a) the provision of information regarding the right and its waiver?
(b) evidence regarding the voluntary and unequivocal nature of a waiver?
(c) the record keeping of waivers?
(d) the revocation of waivers?

Theme 5 – the right to have a third person informed of the deprivation of liberty

Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish.

If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. For the purposes of this paragraph, a person below the age of 18 years shall be considered to be a child.

Member States may temporarily derogate from the application of the rights set out in the above two paragraphs where justified in the light of the particular circumstances of the case on the basis of one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
(b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

Where Member States temporarily derogate from the application of the right set out in the second paragraph above, they shall ensure that an authority responsible for the protection or welfare of children is informed without undue delay of the deprivation of liberty of the child.

Question 6.

What changes need to be made in your Member State – covering both national law and national practice - with respect to the right to have a third person notified of the deprivation of liberty regarding:

(a) the time when this right is exercised (i.e. without undue delay);
(b) any issues relating to the application of the right to a child.

Theme 6 - the right to communicate with third persons

Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to communicate without undue delay with at least one third person, such as a relative, nominated by them.

Member States may limit or defer the exercise of this right in view of imperative requirements or proportionate operational requirements.

Question 7.

What changes need to be made in your Member State – covering both national law and national practice - with respect to the right to communicate with third persons regarding:

(a) the time when this right is exercised (i.e. without undue delay)?

(b) the limitations or deferrals imposed on this right?

Theme 7 – remedies

Member States shall ensure that suspects or accused persons in criminal proceedings have an effective remedy under national law in the event of a breach of the rights under this Directive.

Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with the second paragraph of Theme 2, the rights of the defence and the fairness of the proceedings are respected.

Question 8.

What changes need to be made in your Member State – covering both national law and national practice - with respect to remedies regarding:

(a) the availability of a remedy for breach of the right of access to a lawyer or the right to communicate with third persons?

(b) the assessment of statements made by suspects or accused persons in breach of the right to a lawyer?

(c) the assessment of statements made by suspects or accused persons where a derogation of the right to a lawyer was authorised?

Theme 8 – the European Arrest Warrant

(i) Executing Member State

Member States shall ensure that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant.

With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:

(a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;

(b) the right to meet and communicate with the lawyer representing them;

the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.

The following rights listed above (confidentiality, right to have a third person informed, right to communicate with a third person, the conditions for a derogation and waiver, plus the right to communicate with consular authorities), and, where a temporary derogation under the third paragraph of Theme 5 is applied, shall apply, mutatis mutandis, to European arrest warrant proceedings in the executing Member State.

(ii) Issuing Member State

The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

Where requested persons wish to exercise the right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in the executing Member State shall promptly inform the competent authority in the issuing Member State. The competent authority of that Member State shall, without undue delay, provide the requested persons with information to facilitate them in appointing a lawyer there.

The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.

Question 9.

What changes need to be made in your Member State – covering both national law and national practice - with respect to the European Arrest Warrant regarding:

(a) the right to a lawyer in the executing Member State if your Member State is the executing Member State (e.g. effective exercise of rights, without undue delay, right to meet and communicate, record keeping)?

(b) the right to a lawyer in the issuing Member State if your Member State is the issuing Member State (e.g. information without undue delay)?

(c) the right to a lawyer in the issuing Member State if your Member State is the executing Member State (steps to be taken by the executing Member State)?

(d) the use of a European Supervision Order in appropriate cases?

General questions

Question 10.

Has the directive brought important changes on the right to access to a lawyer in criminal proceedings in the legislation and practice of your Member State? what are the main aspects that could be improved, both at EU and national level (apart from your answers already given)?

Question 11.

Do you have comments on an article of the directive not covered by any of the questions above?

Question 12.

Do you have any good practices to pass on, that you have not already mentioned? (N.B. This question is particularly important, given that one of the sections of the final report will focus on good practices.)

Annex 3

QUESTIONNAIRE RESPONSES ON INTERPRETATION AND TRANSLATION

Question 1 ***What is the situation in your Member State – covering both national law and national practice - with respect to the right to interpretation regarding:*** *(a) communications between the suspect or accused and the competent authorities in the Member State?* *are there any points to raise in particular regarding:* *i. the time of provision (e.g. "without delay")?*	
Austria	The Austrian Code of Criminal Procedure (StPO) provides in § 56(2) that "interpretation must be provided … in particular for hearings of evidence, which are attended by the suspect … If interpretation cannot be provided within due time at the place of the hearing, interpretation may be provided by way of technical means of sound and vision transmission." Interpretation is provided within due time. In practice, there are no problems as regards the time of provision, as the police and the courts have lists of interpreters with are available within short notice; however, the quality of the interpreters available is often questionable.
Belgium	The Directive 2010/64 has not (yet) been transposed in the Belgian law. The reason appears to be that, as stated hereunder, the existing Belgian law and practice cover already most of the requirement of the Directive. According article 31 of the Belgian law of 15 June 1935 concerning the use of the languages in judicial matters : i). Any suspect, accused or victim may use the language of his/her choice for his/her declaration before the investigative and/or judicial authorities (this means freedom to use any language of the world, and thus not only to the 3 national languages of Belgium[11], even if the person is of Belgian nationality or wants to speak an other language that the one of its nationality if (s)he is foreigner) ; ii). if the investigative and/or judicial authorities do not understand the language chosen by the suspect, accused or victim, the concerned authority has the legal obligation since the very first interview, to request the assistance of a sworn translator to translate the declarations of the person in the language of the procedure; iii). the costs of translation are entirely and definitively covered by the national treasury. This means that even is the person is sentenced as accused or loses as victim, he/she may never be sentenced to reimburse the costs of interpretation and translator fees. NO point to raise, because this is already respected according the above mentioned Belgian law of 15 June 1935 concerning the use of the languages in judicial matters
Bulgaria	The requirements of the Directive as a whole were transposed into Bulgarian law by an amendment of the Bulgarian Criminal Procedure Code (CPC) published in "State Gazette" No. 21/2014. No specific rule was introduced concerning the time to provide interpretation, e. g. "without delay", "in due time", etc. Nevertheless, there is no information about cases where interpretation was secured with unreasonable delays. Judges informed me that sometimes there had been certain negligible delays caused by the need to find an interpreter from a language usually defined as "rare" but in practice these problems were solved in due time. In my view, delays caused by the need to find an interpreter from a "rare language" are to be excused for the sake of the necessity to guarantee the right to interpretation of suspected or accused persons who do not speak or understand the language of proceedings but can only use their "rare" mother tongue.
Croatia	The Directive 2010/64 has been transposed in the Croatian Code of Criminal Procedure (Official Gazzete No 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14; furthermore: CPC). According to article 8 of the CPC, competent authorities generally provide without delay, interpretation

[11] Being French, Dutch and German.

	of all necessary documents including the interpretation and translation of communication with his defence lawyer, on request of the supect or accused person.
Cyprus	According to article 4(1) of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L.18(I)/2014), the competent authority provides interpretation, without delay, to a suspect or an accused person, who does not speak and/or understand the language in which criminal proceedings are taking place, during the criminal proceedings before investigative and/or judicial authorities, including police questioning, all court hearings and any necessary interim hearings. Additionally, every person arrested by the Police is informed immediately after his/her arrest in a language that he/she understands about his/her rights (article 3(1), Rights of Persons who are Arrested and Detained Law (Law 163(I)/2005). In case that the arrest is carried out outside the police station and the member of the Police does not know the language understood by the arrested person or does not have the necessary means to inform the arrested person, he is obliged, right after his/her admission to the Police Station, to inform the person in charge of the questioning, who is obliged to inform the arrested person, before the questioning starts (article 7 (2).
Czech Republic	The national legislation does not include the time of provision (e. g. “without delay”). However, I have not observed in practice any problems with fulfilment of this requirement, when a defence lawyer is present during a legal act (as a police questioning or a court hearing).
Estonia	Right to interpretation is guaranteed by § 10(2) of the Estonian Code of Criminal Procedure (CCP), which provides: "The assistance of an interpreter or translator shall be ensured for the participants in a proceeding and the parties to a court proceeding who are not proficient in the Estonian language". As far as the time of provision is concerned, § 10(8) of CCP states that oral translation [i.e. interpretation] shall be ensured immediately. § 161(1) of CCP adds that "If a text in a foreign language needs to be interpreted or translated or if a participant in a criminal proceeding is not proficient in the Estonian language, an interpreter or translator shall be involved in the proceeding". The term 'shall be involved' means that it is the duty of the government authority who handles the proceeding to arrange an interpreter to be present when required by law. According to § 161(2) of CCP, if an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, the act is null and void.
Finland	According to the Criminal Investigation Act, during the pre-trial investigation stage the criminal investigation authority shall ascertain whether or not the party needs interpretation. The criminal authority shall ensure that the party receives the interpretation that he or she needs. In practice this is ensured quite well, even though sometimes in practice it has been noted that the authority has not arranged for a competent (usually English) interpreter, but conducted the interrogation directly in English and then it has been noted, for example by the defence lawyer, that the authority is not actually speaking (usually English) very well.
France	To implement the directive n°2010/64/EU on the right to interpretation and translation in criminal proceedings, France passed the law n° 2013-711 du 5 août 2013 which was dispatched in the Criminal Procedure Code in the following articles : - preliminary article, - 803-5, - D. 594 à D. 594-11. This right only concerns the suspected persons or prosecuted persons. Article 594-8 provides that interpretation should be performed in a reasonable time. The right to interpretation is provided at the beginning of the deprivation of freedom during custody (garde à vue) according to article 63-1 of French Criminal Procedure Code. In practice there are no problems as police have lists of interprets ready to intervene. Only interprets in rare languages are sometimes difficult to find or too busy (ouigour, somalien, etc...).

Greece	Under Article 233 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, interpretation is predicted to be provided without delay. While law allows, in practice an interpreter is not called during police questioning. The defendant is asked orally whether he/she speaks Greek and if not, his/her personal data are recorded and an interpreter is called at a later stage, during the examination by the investigator, or directly to the court (e.g. flagrante procedure).
Hungary	In the Hungarian criminal procedure the right to interpretation is a fundamental right, every suspect or accused (even witness and other parties in the procedure) has the right the right to use his/her mother tongue. The competent authorities communicate with the suspect or the accused through interpreters. During the court procedure, an interpreter is always present if necessary. During investigation, no hearing of the suspect will be started without an interpreter.
Ireland	Even prior to the passage of directive 2010/64/EU which Ireland has voluntarily opted into, there was an acknowledgement on the part of investigating authorities that interpretation and translation were essential to ensure due process and a fair trial pursuant to the Irish Constitution 1937. It followed that Ireland legislated promptly for this measure in two statutory instruments dealing respectively with Police Stations and Courts http://www.irishstatutebook.ie/eli/2013/si/565/made/en/pdf http://www.irishstatutebook.ie/eli/2013/si/564/made/en/pdf The reality however is that the interpretation and translation is limited insofar as it tends to deal with verbal exchanges rather than with written documents and there are problems in terms of the consistency of quality of service. Typically when a person has clear linguistic difficulties the police (An Garda Siochana) will source an interpreter. From time to time one encounters complaints where the police have failed to do so maintaining that they believe the suspect had a good enough command of English to do without an interpreter. However given that there is a separate development ensuring the persons have a right to have a lawyer present with them during questioning the police are now much more likely to comply given that there will be an independent person present who will raise the absence of an interpreter where one is required. Interpreters are generally available as the work is lucrative and there is quite an amount of competition for translating work. Accordingly in the major population centres it is generally possible to source of an interpreter in the principal languages without appreciable delay. The contract to supply this service is awarded by the police and the Courts service on a national basis. The situation is reversed where the detention is in a remote area or where the language is one of the more uncommon ones.
Italy	It should be at the moment the letter of rights is served.
Latvia	Immediately
Lithuania	This requirement of the directive is usually met in practise. Normally, an interpretation for communication between the suspect or accused and the competent authorities is being provided to the suspect or accused without a delay, except the unprejudiced situations where the suspect or accused speaks a language that is not practised widely in Lithuania. In such cases sometimes it takes time to find an interpreter and it determines the situations where the suspect or accused is not being provided with an interpretation without a delay.
Luxembourg	First of all one has to underline that the directive is still not implemented in national law.

	In practise the undersigned has meanwhile to notice that a foreign language speaking person has under Luxemburgish practise the guarantee to obtain a translation “from the very first moment “ or “without delay” when such a person is put under criminal proceedings. The practise is far more “avangardiste” and much more respectful of defence rights than our criminal procedure law.
Malta	Considering the geographical size of Malta, provision of interpreters is generally timely.
Poland	Current regulations of the Polish Code of Criminal Proceedings of 1997 (the Article 72 § 2 as well as the Article 204 § 2) regarding the right to interpretation don’t contain the requirement concerning the time of provision. Particularly, there is neither phrase ‘without delay’ nor other equivalent one. However – in the light of other regulations of CCP - a suspect or an accused shall be instructed about the right to interpretation or translation by the first examination. In consequence, the first examination shall be conducted in the presence of an interpreter summoned ex officio by the proper authority to assist a person in the mentioned activity.
Portugal	The national law so provides; in practice it may happen a certain delay concerning the time of provision.
Romania	
Slovakia	Introduction According to Sec 28 para 1 CCP if there is a need to translate the content of a statement or if the suspect or accused declares that he does not understand the language of the proceedings or he does not speak this language, he shall be assigned an interpreter by a ruling. The recording clerk may also exceptionally act as an interpreter. If the suspect or accused chooses a language, for which no interpreter is listed in the register of interpreters, or the act must be performed without delay and the listed interpreters are not available, the law enforcement authorities or the court shall engage an interpreter of the official language of the state understandable to the person. According to the case law (eg Supreme Court ruling file no. 3 Tdo 57/2012), the right of the accused to use language he or she understands during the criminal proceedings is one of the fundamental principles of the Code of Criminal Procedure. The same right is guaranteed by the Constitution of the Slovak Republic in Article 47. If the accused declares that he does not speak the language of the proceedings, he shall have the right to be assigned an interpreter or a translator (Sec 2 para 20 CCP). In practice the time requirement is respected and interpreters are assigned without delay.
Slovenia	The right of interpretation is provided in the Article 8 of the national law (Procedural Law, Zakon o kazenskem postopku – ZKP-M). For the suspect, this right is provided as soon as he/she becomes a suspect in the police investigation and before the police starts to interrogate a suspect. Since the right of interpretation has been implemented in the Slovene law with the amendement to the Law on Criminal Procedure from November 21, 2014 and became valid on December 6, 2015, I cannot comment on the situation in practise.
Spain	The interpretation is provided at the time of the communication. Generally speaking, mostly concerning usual foreign languages (English, French), there is no delay. However, due to lack of interpreters some delay exist in small cities in comparison to major cities.
Sweden	A suspect or accused person that do not master the Swedish language is entitled to interpretation at all stages of the criminal proceedings. The right to interpretation applies from the time that the suspected person is made aware of that he or she is suspected of having committed a crime. In principle, Swedish practice can be said to comply with the right to interpretation without delay as referred to in Article 2, although there is no provision expressively ensuring a prompt access. Such delay that occasionally might occur is often due to the difficulties finding a qualified interpreter. In these situations the interpreter is normally engaged to assist via telephone.
The Netherlands	article 27 paragraph 4 Netherlands Code of Criminal Procedure (NCCP), from the moment a person is considered a suspect, the right to have the assistance of an interpreter arises. This applies to police interrogations (article 29s NCCP), interrogations before the examining magistrate (article 191 NCCP) and before the court in first (article 274 NCCP) and second instance (article 415 juncto 274 NCCP). In

	case the suspect is not interrogated immediately upon his arrest he must be informed about the reason of his arrest in a language he understands upon arrival at the police station or the moment he is brought be-fore the acting public prosecutor at the latest. Prior to that it has to be determined whether the suspect has (sufficient) knowledge of the Dutch lan-guage (see § 3.3 Instructions on assistance of interpreters and translators during investigation and pros-ecution of criminal acts 'Aanwijzing bijstand van tolken en vertalers bij de opsporing en vervolging van strafbare feiten, hereinafter: the Instructions) and, if not, which language he does fully have command of (see § 3.4 Instructions). It is common practice for suspects who do not have a (thorough) command of the Dutch language, to be assisted by an interpreter when interviewed before aforementioned authorities. Experience shows that the time lost directly after the arrest of the suspect because of the number of available interpreters as well as the possibility to appoint an interpreter by phone is acceptable. When a suspect is brought before the public prosecutor or will be heard in court, it is practically always possible to invite and appoint an interpreter for that meeting. <u>In summary</u> >The right to be assisted by an interpreter during an interrogation has been enshrined in the law. >In practice interpreters are engaged swiftly, so the time lost in the procedure is acceptable.
UK	**<u>England and Wales</u>** A person detained in a police station for the purpose of questioning who does not appear to speak or understand English must not be interviewed without an interpreter present in accordance with the relevant Codes of Practice which implement the Directive (see below). There is no explicit 'without delay' provision in the Code of Practice. However, as a person can only be detained in a police station (in normal circumstances) for a period of 24 hours, there is an incentive to arrange interpretation services as soon as possible in order to progress the investigation.
	<u>Scotland</u> Introduction The directive on the right to interpretation and translation in criminal proceedings was implemented in Scotland by The Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations 2014, which came into force on 19 May 2014. In terms of national practice, in Scotland, there is an agreed a Code of Practice (CoP) which sets out the various responsibilities and obligations of organisations working with interpreters in the Scottish criminal justice system. Interpreters are engaged to assist individuals who come into contact with the criminal justice system and do not speak English, do not understand English, have a hearing impediment or have a speech impediment. The CoP provides an overview of what is expected from each of the partners when instructing the services of an interpreter to assist in a criminal court case - from the first stage of the police investigation through to court proceedings and disposal of a case. It also sets out what these organisations should expect from the interpreter assigned to work on a criminal case in a Scottish court and provides an overview of what will happen in relation to the provision of translation of essential documents. The CoP was developed by the Working Group on Interpreting and Translation (WGIT). This group aims to establish common standards for interpreting and translation in the criminal justice system. Its members are drawn from the main criminal justice partners – Police Scotland, the Scottish Courts and Tribunals Service (SCTS), the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Legal Aid Board (SLAB) and the Law Society of Scotland. A representative from the Inspectorate of Prosecution periodically attends meetings to observe proceedings. WGIT members also seek advice from organisations with extensive knowledge and experience in the field of interpretation. The Scottish Children's Reporter Administration (SCRA) are also represented. Children's hearing and related court proceedings are not criminal proceedings however SCRA are parties to the current joint

	contract for the provision of interpreters and translators and share an interest in the standard of service provided. In terms of the 2014 Regulations, reg 3, where a person is taken into police custody (or attends voluntarily for the purpose of being questioned about an offence he is suspected of having committed) then a constable must take “all reasonable steps” to determine whether he requires interpretation assistance because he does not speak or understand English, and where the constable determines that such assistance is required, it must be provided “as soon as reasonably practicable”.
	Northern Ireland Police station all written material re the rights translated. Copy given in clients own language Telephone interpretation facilities used to explain authorisation of detention process if interpreter not already physically present Interview- interpreter present both to allow completion with lawyer in private and interpret police questions and clients answers in interview Court- some delay re translation. Not available until prosecutors ready to proceed Always provided before client required to indicate plea of guilty or not guilty Funding to cover same has to be secured in advance

ii.	*the stages for which provision is made (e.g. all the proceedings mentioned)?*
Austria	Interpretation is provided at all stages of the proceedings (evidence hearings and court hearings), i.e. by the police, the prosecutor and the court(s) (§ 56(1)+(2) and § 53(1) first sentence StPO).
Belgium	NO point to raise, because this is already respected for all the proceedings from the very first communications/interview of the suspect, accused (and victim) according the above mentioned Belgian law of 15 June 1935
Bulgaria	Provision of interpretation is made for all stages of criminal procedure and covers all the proceedings mentioned by the Directive. There is no information about cases where the right to interpretation has been practically denied at a given stage of criminal proceedings.
Croatia	Interpretation is provided at all stages of the proceedings.
Cyprus	The Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), applies in criminal proceedings and proceedings for the execution of a European Arrest Warrant from the moment when a person is informed by the competent authority, with official notification and/or otherwise, that he/she is suspected or accused of having committed a criminal offense until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offense, including judicial decision on any appeal brought ((Article 3(1))
Czech Republic	The right to interpretation applies throughout the whole criminal proceedings. Section 2 of the Code of Criminal Procedure (Act no. 141/1961 Coll., furthermore only "CCP"), which contains main principles of the criminal proceedings, in its paragraph 14 states: "Everybody who proclaims that he does not command the Czech language, is entitled to use before the law enforcement authorities his mother tongue or language that he states he commands". This principle, which stems from the Article 37(4) of the Charter of fundamental rights and freedoms (Act no. 2/1993 Coll.), is further elaborated in Section 28 CCP (see below). I have not observed in practice any problems with fulfilment of this requirement, when an attorney is present during a legal act.
Estonia	Right to interpretation is applicable in all stages of criminal proceedings.
Finland	During the pre-trial stage the right to interpretation is described above. During proceedings in courts, be it a coercive measures trial (detention etc.) or a main hearing the right to use one's own language and to interpretation is provided for in the Criminal Procedure Act, according to which persons other than those speaking Finnish, Swedish or Sami have the right in court proceedings in which they are either suspects or complainants, to use a language that they understand and speak sufficiently, and persons using sign language have the right to use this. The court shall ensure that the party receives the interpretation that he or she needs.
France	The right to interpretation is provided at all stages of proceedings according to articles 62, 63-1, 102, 114, 121, 272, 279, 344, 393, 407, 535, 695-27, 695-30, 706-71 of French Criminal Procedure Code.
Germany	
Greece	Under Article 233 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and I practice, interpretation is predicted to be provided at each stage of criminal proceedings. Practically, during the arrest and police questioning, interpretation is not provided. Usually, an interpreter for the first time is assigned before the investigator (sometimes even before court), where the indictment is briefly described to the accused.
Hungary	See above regarding the stage of investigation and court procedure.
Ireland	The vast majority of engagements which a suspect will have with the authorities will commence with an arrest for the purpose of questioning. In a limited number of cases a request is made to voluntarily attend for interview but most suspected persons will be advised by their solicitors that it is preferable to be interviewed under arrest given that there are safeguards in place and time limitations.

	Typically an arrested person will be given a written notice of rights. A copy of the notice in the English-language is attached. It will require revision in the light of measure B. The notice is currently available in police stations in a number of languages. Once it is appreciated that an interpreter will be necessary to facilitate an interview the police will seek to obtain an interpreter as quickly as possible. They will also advise the suspect of his right to consult a solicitor and the solicitor will in turn advise the client of his right to be present with him during interview. Where documents are put to suspects in the course of interview they typically will be only in the original language (generally English) and the interpreter will translate the document to the suspect. This is very unsatisfactory insofar as suspects may be asked to consider complex documents which require repeated reading without the benefit of a copy of the document in a language that they understand.
Italy	From the first moment the accused is made aware of the proceeding or the moment from there is granted the right to have access to the file.
Latvia	All the proceedings mentioned.
Lithuania	The stages for which provision is made are not indicated in the national law but, in practise, it covers all the proceedings mentioned, i.e. interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.
Luxembourg	Translation is guaranteed and granted at the police station hearing, during the interrogation by investigative magistrates, and during the hearing concerning the merits of the case in first instance and in appeal. Also during every request concerning provisional liberty the person under procedure has the right and the guarantee to be assisted by a translator, even if he puts his request for provisional liberty without any help of a lawyer.
Malta	All stages of proceedings
Poland	In the mentioned Articles (72 § 2 and 204 § 2) there is not indicated a certain stage for which provision is made. It means that general rules of interpretation should be applied. According to such rules suspects or accused persons have the right to interpretation during the whole criminal proceedings (i.e. at the stage of preparatory proceedings and proceedings before courts).
Portugal	Interpretation is provided during all the criminal proceedings before investigative and judicial authorities.
Romania	
Slovakia	The right applies to all stages and all proceedings.
Slovenia	The provision is made for all the proceedings mentioned.
Spain	All stages.
Sweden	
The Netherlands	See above.
UK	**<u>England and Wales</u>** The Directive has been implemented in England and Wales through the revision of rules which govern the treatment of persons in police custody (Codes of Practice to the Police and Criminal Evidence Act 1984) and the Criminal Procedure Rules 2014 (Crim PR) which provide rules for all criminal proceedings in Magistrates' Courts, Crown Courts, and the Court of Criminal Appeal in England and Wales. In places of detention (including police stations), the new rules spell out that the duty to provide interpreters applies not only to persons detained but also to those who are being interviewed under caution without having been arrested (para.13.1(b)). The arrangements made must comply with the minimum requirements laid down in the Directive. New para.13.1A states that these include that the arrangements made and the quality of interpretation and translation provided shall be sufficient to 'safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the cases against them and are able to exercise their right of defence'. This term which is used by the Directive means that the suspect must be able to understand their position and be able to communicate effectively with police officers, interviewers, solicitors and appropriate adults

	as provided for by this and any other Code in the same way as a suspect who can speak and understand English who does not have a hearing or speech impediment and who would not require an interpreter. In the Magistrates' Court and Crown Court, the rules are less prescriptive. In accordance with Crim PR Rule 3.9, in order to prepare for trial, the court must take every reasonable step to facilitate the participation of any person, including the defendant. Facilitating participation includes 'finding out whether the defendant needs interpretation because the defendant does not speak or understand English; or the defendant has a hearing or speech impediment.' Where the defendant needs interpretation, the court officer must arrange for interpretation to be provided at every hearing which the defendant is due to attend; interpretation may be by an intermediary where the defendant has a speech impediment, without the need for a defendant's evidence direction. The court officer is usually a legally qualified assistant to the bench in the Magistrates' Court, and a lay assistant to the judge in the Crown Court. The provision of interpretation services is essentially an administrative task.
	Scotland In terms of the 2014 Regulations, provision is made for interpretation at all stages of the criminal justice process, from the time that an accused person is taken into police custody (as discussed above), to the conclusion of criminal proceedings (including pre-trial proceedings, the trial, sentencing diet and any appeal proceedings). In terms of practical arrangements, it is the responsibility of the police to advise the procurator fiscal in the police report whether the accused requires the services of an interpreter to give evidence in court. The reporting officer should specify the language and dialect required in the police report and should also provide the name, designation and qualifications of any interpreter used at the investigative stage so that the procurator fiscal and the Scottish Court and Tribunal Service may ensure that, so far as possible, the same interpreter is not used at any court diet. It is recognised that there is limited time available between arrest and the first appearance of an accused person in custody. In all cases therefore where accused persons are appearing for the first time from police custody/warrant/next day undertaking the police will, so far as possible, arrange, on behalf of the Scottish Court and Tribunal Service, for a suitably qualified and experienced interpreter to appear at court to assist the accused. The interpreter engaged for court should not be the same interpreter who assisted the accused during the investigation stage although it is recognised that it may not always be possible to secure the services of a different interpreter who has appropriate qualifications and experience given the limited time available. The fact that the police have engaged an interpreter for the accused's first appearance from custody should be set out in the police report to the procurator fiscal. If difficulties arise in securing the services of an interpreter the police should make early contact with the Scottish Court and Tribunal Service and advise the procurator fiscal. In respect of all other criminal court diets, both pre-trial and trial diets, it is the responsibility of the Scottish Court and Tribunal Service to engage a suitably qualified and experienced interpreter, skilled in the language and dialect required to assist the accused. In respect of all other diets (such as undertakings or first diets/preliminary diet) the procurator fiscal will advise the sheriff clerk (or in high court cases the deputy principal clerk of Justiciary) in writing of the language needs of the accused, namely the language and dialect as set out in the police report as soon as practicable but at least 7 days before the scheduled diet. For rare languages (where there may be a limited numbers of suitably qualified interpreters), the procurator fiscal should advise the sheriff clerk (or depute clerk of Justiciary) of the language requirement as soon as the case is marked to allow SCTS sufficient time to source a suitable interpreter.
	Northern Ireland Yes

(b) communications between the suspect or accused and their legal counsel? are there any points to raise in particular regarding: *i. the occasion for which provision is made (e.g. all the proceedings mentioned)?*	
Austria	Interpretation must be provided <u>if requested</u> for the contact between the suspect or accused and the legal counsel, if this contact is <u>in direct connection with evidence hearings, court hearings, any remedy or any other application</u> (§ 56(2) StPO). Therefore, the provision covers all proceedings mentioned. In practice, as long as any proceedings are pending, the courts (police or prosecution) cannot and do not check whether there is such a direct connection.
Belgium	NO point to raise : if the legal counsel (lawyer) does not understand the language of his/her client being suspect or accused, both may enjoy, according the good practices, the assistance of a legalised translator to translate the discussions between them, as for instance during the confidential consultation previous the first interrogation of an arrested suspect, as well as at any later stage of the proceedings.
Bulgaria	Interpretation is available for communications between the suspect or accused and their legal counsel during both pre-trial and trial proceedings. There is no information about cases where the right to interpretation has been practically denied at a given stage of criminal proceedings. <u>*An example of good practice going beyond the requirements of the Directive:*</u> A new rule was introduced by the amendment of CPC pointed out in my answer to question 1 *(a) i* above, stipulating that "a witness shall not be interrogated about circumstances that she/he became aware of in her/his capacity of an interpreter during the communications between the accused and the legal counsel". In my view, this is an effective domestic instrument to guarantee interpreters' independence beyond the scope of the Directive.
Croatia	According to the Article 8 of the CPC, interpretation of the communication between the suspect or accused person and his defence lawyer must be provided in all stages of procedure, if it is requested.
Cyprus	According to article 4(3) of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L.18(I)/2014), where necessary for the purpose of safeguarding fairness of the proceedings, interpretation is available for communication between suspect or accused persons and their legal counsel, if this is directly relevant with the questioning or/and hearing during the proceedings or/and the execution of a European Arrest Warrant, or/and with the lodging of an appeal or/and other procedural applications, including the application for guarantee. According to article 12(4) of the Rights of Persons who are Arrested and Detained Law (Law 163(I)/2005) in the case of detained persons who are foreigners or of detained persons with whom the lawyer cannot communicate in a language they understand for any reason, an interpreter or another person may also be present during the consultations, following relevant request submitted by the lawyer, so that the lawyer may communicate with the detained person in a language the latter understands.
Czech Republic	The new implementing legislation states in Section 28(1) CCP: "the appointed interpreter shall interpret on his request (note: on the request of the accused or suspect) also his consultation with the defence lawyer in the course of the legal acts". I am of the view that the wording of the new implementing legislation does not fully comply with the respective Article 2(2) of the Directive. In my opinion the national legislation has implemented this right too narrowly as it applies it only to "the course of the legal acts", contrary to the Directive´s wording "in direct connection" with the legal acts. It is my understanding of the wording of the Directive (and it would seem only logical from the point of proper exercise of defence) that the Directive intends to cover not just the communication between a defence lawyer and a client during e. g. the court hearing itself but also preparations between the accused or suspect and his defence lawyer for this court hearing as e.g. consultations in a prison or defence lawyer´s office before the hearing. Though the Directive was implemented in this regard narrowly, I experienced in practice that my costs of the ex officio defence lawyer, which I had to pay to the interpreter whom I needed for the consultation

	with my client, who was a foreigner and with whom I did not share a common language, in a prison, were at the end of the criminal proceedings covered by the state.
Estonia	§ 10(21) of CCP provides the following: "If a suspect or accused is not proficient in the Estonian language, he or she shall be ensured the assistance of an interpreter or translator at his or her request or the request of his or her counsel at the meeting with the counsel which is directly related to the procedural act performed with respect to the suspect or accused, the application or complaint submitted. If the body conducting the proceedings finds that the assistance of an interpreter or translator is not necessary, the body shall formalise the refusal by a ruling." The provision covers all stages of the proceedings.
Finland	During the pre-trial investigation stage, please see above. Usually the investigative authority arranges for an interpreter, but the legal counsel can also do this. If for some reason it is not known in advance that the suspect needs an interpreter, the interrogation will be postponed in order to get an interpreter present. During the court proceedings phase the courts arrange for the interpreter, unless it has been agreed that the legal counsel arranges this, and the suspect/accused is given the opportunity to discuss with their legal counsel prior to the proceedings. At least in the largest District Court in Finland (Helsinki) the interpretation services have been tendered by the Ministry of Justice, so in practice it is always the court that arranges the interpreter.
France	This right is only granted before all interrogations, before police or judges and hearings. Special authorisations are required in such cases granted by investigation judges or court judges. Not during the normal course of defense during meetings between the lawyer and his client or jail visits. Therefore defense cannot appoint or directly ask the translator to intervene. Article 594-3 states on this matter and rules the access a translator by the lawyer during : - custody, - interview before an investigation judge or a court judge, - before any appeal against any jurisdictional decision, - before any petition for freedom release.
Germany	
Greece	Under Article 233 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, an interpreter is predicted to be provided when it comes to examining a suspect, an accused person, the civil defendant or a witness who do not speak or understand the Greek language sufficiently, or have hearing or speech problems. If necessary, interpretation is available for communication between the accused and their lawyers. In practice, for example, when the accused can't cover the cost, an interpreter can't be provided, except when the communication is held before the authorities. In practice, to facilitate contact with the counsel (in prisons or detention centres), another prisoner who speaks Greek undertakes the task of interpretation, with the diligence of the accused person.
Hungary	During any procedural action before the competent authorities, the legal counsel may also ask for the assistance of the interpreter applied by the authorities. The legal counsel may ask for the assistance of the official interpreter during the procedure, but this affects the question of defence lawyer secret, since legal counsels may not want to have conversations under defence lawyer secret at the attendance of the interpreter applied by the authorities, notwithstanding the fact that interpreters also have the obligation on secrecy. Typically the legal counsels either communicate themselves or apply a private interpreter.
Ireland	At the conclusion of the period for which arrest was authorised the suspect will either be charged with an offence and produced before a Court as soon as maybe, or released unconditionally so that the file concerning the matter can be considered by the Director of Public Prosecutions.

	If a charge is preferred the charge will be provided to the suspect in the English language only thereafter they will be produced before a Court where an interpreter will generally be provided to interpret the proceedings simultaneously. It is the exception rather than the norm that Court documents including witness statements will be translated and provided in written translated form. It is far more common that an interpreter will go over the statements with the suspect/accused and the suspect's lawyer and translate them as they go along. This is unsatisfactory as it reduces the opportunity for a suspect to consider statements at leisure and at length and to give informed instructions thereafter. The proceedings will typically be conducted in the English language with the interpreter translating simultaneously. In summary proceedings, which can carry on aggregate jail penalty of up to 2 years, the decision of the Court is generally given viva voce. No written decision is provided and accordingly the suspect, now a convicted person, is reliant on a simultaneous translation given at the time as to the reasons why the person has been convicted. This makes it quite difficult for a person to make an informed choice as to whether to appeal. In more serious cases where the trial is conducted before a jury, the verdict at the conclusion of the case is either 1. guilty, 2. not guilty or 3. a failure to agree a verdict. No reasons are given and translation would add little to that process. In the more serious cases it is not unusual for lawyers representing the accused person to apply to the Court that all the case materials be translated into a language that the accused understands. This should be the norm but unfortunately there are many cases where an application which would be favourably entertained by a Court is simply not even made by the defence lawyers on the dangerous assumption that the accused would have little to add to the defence. As above the translation on a simultaneous basis is generally accommodated. The principal complaint aired by practitioners however is that both in a police station context and in a Court context the same translator is used to translate on behalf of the authorities whether the police or the Court, as is used to translate private consultations between the solicitor and the client. This naturally leads to confusion on the part of the suspect who identifies the translator as being part of their defence team, as typically they will meet with the lawyer and translator before they meet with the interviewing police, and in interview treat the questions as though they were questions being posed by their defence and accordingly volunteer information which is detrimental. Equally there have been instances where translators have unwittingly introduced into interview information which was communicated on a confidential basis in an earlier consultation by way of clarifying replies. The general view of defence practitioners is that it is highly dangerous not to have separate translation provided to the defence from that which is provided for the purposes of the authorities.
Italy	An interpreter must be provided even for the communication between the accused person and the legal counsel. In practice this provision is applicable for accused under custody on during the trial or any other investigations in which is required the presence of the lawyer and the accused.
Latvia	All the proceedings mentioned.
Lithuania	Lithuanian law does not foresee the possibility to provide the suspect or accused with an interpretation for the communication between the suspect or accused and their legal council. Usually, if the suspect's or accused's legal council does not speak the language that the suspect or accused speaks and understands, the legal council has the possibility to communicate with the client via interpreter who works at the police station, at the prosecutor's office or in the court but the suspect or accused and their legal council enjoy this possibility during the police questioning and the court hearing only. This means that the suspect or accused has no possibility for communication with their legal council before mentioned procedures and be properly advised on his/her rights and other related issues. If the suspect

	or accused requests for the interpreter in order to communicate with the legal council, he/she will be refused on the ground that the law does not foresee such a possibility.
Luxembourg	During this conversations a lawyer is present if needed and if requested, and this during all the stages of proceedings concerned. The translation fees have to be advanced by the lawyer and in case of judicial assistance these fees can be entirely recovered by the ministry of justice. The sole delicate situation is that very often the translator ordered by the prosecutor and by the investigating authorities is the same one as the one present in custody during the preparation of the case by the lawyer and the person pursued. This is a very delicate situation and the undersigned proposes to separate these two situations, which means that a translator who was ordered by pursuant authorities can't be asked anymore by the defence or vice versa.
Malta	As necessary
Poland	According to the Article 72 § 2 CCP an interpreter shall be summoned to participate in legal activities of the criminal proceedings, fulfilled with the obligatory presence of a suspect or an accused (e.g. in examinations, in inspections or viewings, in presentation for identification, in experiments and reconstructions of the scene of crime in police investigation or in prosecutor or court proceedings etc.). On the request of a suspect (an accused) or his (her) lawyer an interpreter shall be summoned whenever it is necessary to communicate between a suspect (an accused) with his (her) lawyer in reference to the legal activity in which a suspect (an accused) can take part (so, where his or her presence isn't obligatory). This means that at every stage of the criminal proceedings, in case of activities of investigation and criminal justice bodies in which a suspect (an accused) must or is entitled to participate an interpreter shall be summoned to enable a communication between a suspect (an accused) with his (her) lawyer (in the above mentioned situations the interpretation is mandatory ex officio or upon the request). According to the Article 204 § 1 CCP an interpreter should be summoned whenever it's necessary to examine or hear a person who entirely doesn't understand and speak Polish language (or who doesn't understand and speak Polish language in a sufficient degree). An interpreter should be summoned also in a situation in which there is a necessity to translate into Polish writings prepared in a foreign language or if it's necessary to acquaint a suspect (an accused) with the taken evidence (Article 204 § 2 CCP).
Portugal	In several cases, interpretation for communication between the suspected or accused and their legal counsel is not provided by the State: it is up to the legal counsel to ensure the meanings to interpretation and/or translation.
Romania	
Slovakia	According to Sec 28 para 1 CCP, should the accused enjoy the right to interpreter, upon his request the interpreter shall interpret the content of the communication between the accused and the counsel throughout the proceeding or in the context of the proceeding, as regards submission of appeal or other procedural motions.
Slovenia	The right of translation of the privileged communication between the suspect (or accused) and their legal counsel for all the proceedings mentioned is provided in the Article 74/2 of the Law on Criminal Procedure.
Spain	Only before the procedural acts where the suspect or accused is going to be examined, and for preparing remedies or procedural applications. The communications have to be expressly sought by the lawyer or the suspect. In some occasions, delays arise.
Sweden	Suspects or accused persons have a right to communicate with the appointed public defence counsel during all stages of the criminal proceedings. In these communications, the suspected person is assisted by an interpreter, if needed. The lawyer is normally offered the opportunity to speak in private with the client in direct connection to an interrogation and is then also given the opportunity to use the interpreter that the police has engaged for the questioning. In regards to court hearings the lawyer and the client generally have prepared the defence in advance. However, should a need for an interpreted consultation occur in direct connection to the hearing, a request on the matter is almost without exception granted by the court.

The Netherlands	The person considered as a suspect has a right to a counsel (article 28 paragraph 1 NCCP). Starting point is that the suspect must have access to a counsel as often as possible. The same article, paragraph 4, creates the possibility to call in the assistance of an interpreter during the meeting between counsel and suspect. In practice this process passes off smoothly, especially when the language to be interpreted is one of which the interpreter database holds many. Counsel has the opportunity to call in an interpreter via the national interpreter agency or to ad hoc contact one at a moment counsel thinks fit. <u>In summary</u> Suspect has the right to be assisted by an interpreter in communicating with his counsel.
UK	**<u>England and Wales</u>** See above.
	<u>Scotland</u> There is provision for the interpretation of communications between the suspect/accused and their counsel throughout the criminal justice process. Legal aid is available for this purpose to qualifying person. Where a solicitor is called to a police station to provide advice before or during police interview, the interpreter already engaged by the police will assist. For subsequent consultations and court appearances, sanction for the services of an interpreter will require to be sought from the Scottish Legal Aid Board, who maintain a register of interpreters (including languages spoken, geographical area covered, and qualifications).
	<u>Northern Ireland</u> No issues

(c) the procedure or mechanism for ascertaining understanding of language?	
Austria	There is no specific procedure to ascertain the understanding of the language. The suspect or accused may however use the same legal remedies as for any other violation of the law by the police, the prosecution and the court, i.e. objection (§ 106 StPO), complaint (§ 87 StPO) and application (§ 281(1)4 StPO). However, there is no procedure in place if the suspect does not understand the language sufficiently to take such remedies. In practice however, when there is any doubt that the suspect or accused does not speak and understand the language, an interpreter is provided, i.e. the theoretical gap is usually not a problem.
Belgium	No specific mechanism or procedure, due to the immediate assistance of a translator which make possible to ascertain if the interrogated person understands or not the language.
Bulgaria	The above amendment of CPC introduced a new Article 395b. It stipulates that the courts and the organs of pre-trial investigation are to ascertain the fact that the accused persons do not understand the language of proceedings at any stage of procedure. Judges I had the chance to interview did not inform me about any significant practical problems in applying this rule. Neither I met such problems in my professional experience.
Croatia	The suspect or accused person has the right to appeal on quality of the interpretation, to the competent body and if the appeal is grounded, the competent body will appoint a different interpreter. Also, according to the Article 8, Paragraph 9 of the CPC, sentence can not be based on evidences which are obtained against the rules on interpretation. Besides all before mentioned, the suspect or accused person may use ordinary legal remedy - appeal against the sentence, based on the fact of violating the right on the interpreter.
Cyprus	According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), the competent authority ensures, in any way considered appropriate, whether the suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter. (Article 4(5)). There is no specific procedure or mechanism to ascertain whether the suspected or accused persons speak and understand the language of the criminal proceedings.
Czech Republic	The national legislation does include a formal mechanism or procedure for ascertaining understanding of the Czech language. The suspect or accused may trigger their right to interpretation already by proclaiming that he does not command the Czech language (see above wording of Section 2(14) CCP). I have not observed in practice any problems with fulfilment of this requirement, when an attorney is present during a legal act.
Estonia	§ 10(2) of CCP stipulates: "In the case of doubt, the body conducting the proceedings shall determine the proficiency in the Estonian language of both the participants in the proceedings as well as parties to the court proceeding. If it is impossible to determine the proficiency in the Estonian language or it proves to be insufficient, the assistance of an interpreter or translator shall be ensured." There is no specific procedure for determining language proficiency, and therefore it is up to the police, prosecutor, or judge to ascertain whether the person understands Estonian or not (usually, this is done by simply asking whether one understands or not), and in case there is doubt on this issue, an interpreter must be involved.
Finland	There is no procedure or mechanism for this. In practice the ascertaining is done by observations on the spot, which obviously – especially regarding more unusual languages – is not a very safe way. However, both during the pre-trial investigation stage and the court proceedings phase, the authorities shall appoint a new interpreter if legal safeguards for the party require this. The latter provision has in practice been used very seldom, even if it in some cases would have been called for.
France	There are no special mechanism for that the non-understanding is fully let to the police or the judge, only if “a doubt exists” without précising in which mind on the ability of the accused person to understand French language (article 803-5 CPP).
Germany	

Greece	Under Article 233 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, the examiner shall verify by all appropriate means, whether the Greek language is understood and if the assistance of an interpreter is necessary. There is no mechanism. The competent authorities ask whether he/she speaks Greek and the relevant statement is recorded. The courts show great diligence in this respect, i.e. when they have the slightest doubt, they appoint an interpreter. But this is not always the case with the police.
Hungary	The competent authority asks the suspect/accused person whether he/she understands and accepts the interpreter.
Ireland	From time to time one encounters complaints by person that they have asked for a translator but one has not been provided. In the police context this will generally be justified by the police on the basis that they believe the person had adequate English to cope with the interview situation. However the fact that interviews are audio-visually recorded, and now are conducted in the presence of a lawyer means that there will at least be objective evidence to review as to whether or not a translator ought to have been supplied. A competent defence solicitor will insist on a translator if they are unable to give their advice and be understood. The advice that is required to be given in police stations in Ireland where the right to silence is heavily qualified is very complex even for a native speaker of the English language. It would not be possible to advise competently a person who has a working knowledge of English but not a native knowledge. In Court there are occasions when an application is made for an interpreter to be appointed which is refused. This is rare. Most judges will accept the professional assessment of the defence lawyer that an interpreter will be necessary. An appeal Court would be highly critical of a judge who would permit a trial to proceed in the absence of interpretation where it had been requested unless there were very strong grounds for refusal. In practice it there is very little difficulty about interpretation being provided in principle, the problem is the extent of the service and the quality of it that is provided.
Italy	None. Since there is not a list of “legal” interpreters and translators, there is not a procedure on mechanism do ascertaining the understanding even of the Italian legal terms, expecially for language not commonly spoke or studied.
Latvia	The person is entitled to point out a language he or she understands and agrees to use it as the language of communication. Person has to confirm with a signature or orally, that he or she understands the chosen language and the text that is written in it and that he or she can communicate in it.
Lithuania	There is no particular procedure or mechanism for ascertaining understanding of language. In practise, when the suspect or accused claims that he/she does not understand Lithuanian language or it is obvious from his/her behaviour, he/she is being provided with the interpreter.
Luxembourg	This stays a problem Except a counter verification, in case a doubt of quality of translation is raised there are no direct mechanisms.
Malta	It is left up to the accused to signal if he/she has difficulties in understanding the Interpreter.
Poland	There are no special regulations in the Code of Criminal Proceedings of 1997 regarding the procedure or mechanism for ascertaining understanding of Polish language by a suspect or an accused. It’s simply declared by a suspect or an accused and verified by the observations of investigation or criminal justice officials in a concrete criminal case.
Portugal	There are many malfunctions on this concern.
Romania	
Slovakia	No special procedure. Declaration of the accused is sufficient, moreover interpreter is assigned even if the suspect or accused declares to understand the language of the proceeding but the law enforcement body in question considers his/her language skills insufficient. In this case, the interpreter shall be assigned by a ruling with the possibility to challenge the ruling with complaint.
Slovenia	The suspect shall be provided with oral and written instructions about his right to interpretation. Written instructions shall be given to the suspect.

Spain	There is no specific procedure. In practise, if one asks for an interpreter, the judge grants it to prevent future defence motions contending the violation of the right of the suspect or accused.
Sweden	Generally, the leader of the interrogation or, in case of court hearings, the judge, asks the suspected or accused person whether he or she understands the interpreter.
The Netherlands	It is customary to introduce the sworn interpreter and the suspect prior to an interrogation or interview in order to check whether they understand each other. In most cases they understand each other perfectly. Should this not be the case, this will be reported to the authority (police, court) and another interpreter will be engaged. There is no protocol or legal provision to safeguard this.
UK	**England and Wales** Although is no formal mechanism for ascertaining whether the suspect or defendant understands or speaks English, there is guidance in the Codes of Practice for determining whether a person needs an interpreter at the police station. This guidance suggests that a telephone interpreter service is used, or cue cards or other visual aids are used to determine a person's ability to speak and understand English. The provision of such materials and assistance is a matter for individual police forces. At the police station, the decision is made by the custody officer or the interviewing officer. At the hearing, the decision is made by the court officer, in conjunction with the judge. Ultimately it is the judge's responsibility to determine whether the Defendant needs an interpreter and to ensure that adequate provision is made. The National Agreement on arrangements for the use of Interpreters ('the National Agreement') states at para. 3.2 that it is the responsibility of the judge to ascertain that the defendant speaks the language of the court adequately.
	Scotland This is the responsibility of the police (during the stage of police investigation) and the court (during the court proceedings).
	Northern Ireland In practice-ask the accused or his lawyer

(d) the right to challenge a decision or complain about quality?	
Austria	As described under (c), the suspect may challenge any decision depriving him of the right to interpretation and translation. However, there is no procedure in place to ascertain the quality of the interpretation and translation. In practice, the quality of the interpretation is a major problem; in particular, the police tends to rely on interpreters readily available but not having a proper education. The suspect may lodge an application for another interpreter, but does usually not have the possibility to file such an application due to lack of language skills.
Belgium	Article 40 of the aforementioned Belgian law of 15 June 1935 concerning the use of the languages in judicial matters states that its provisions are prescribed under penalty of nullity of the concerned act, and that this sanction of nullity is pronounced automatically by the judge (or upon request of the parties). The judge in question is, during the criminal investigation, the Accusation Chamber who is legally entitled to survey the regularity of the criminal investigations, and the criminal courts on the later stage of the proceedings.
Bulgaria	The right to challenge the decision on interpretation is granted by Article 395b of CPC pointed out above. The ruling of the investigating authority ascertaining the understanding of the language of proceedings may be appealed before the respective prosecutor. *The decision of the prosecutor is final and is not subject to judicial control, which, in my view, negatively affects the effective exercise of the right to interpretation.* The ruling of the court ascertaining the understanding of the language of proceedings may be appealed before the upper court. In my view, cases of challenging the decision on interpretation have not been very frequent so far. I am not able to conclude that the lack of appeals is due entirely to correct rulings on interpretation. I would rather presume that the rule granting the right to challenge the decision is comparatively new and this is why it has not been so frequently implemented. Complaints about quality. The only provision that could purport to transpose the provisions of the Directive regarding the complaints about quality is the new Article 395e of CPC providing for the right of the accused to challenge the "*accuracy*" of interpretation, whereby the respective authority may dismiss the interpreter and assign a new one or may mandate the same interpreter to do a new interpretation. This legal opportunity for the accused lacks any further details setting any criteria and methods to assess an interpreter's qualification and his/her work in order to decide whether the objection is well-grounded and should be allowed or not. Moreover, in my opinion accuracy does not always mean quality, especially in specific legal terminology.
Croatia	The suspect or accused person has the right to appeal on quality of the interpretation, to the competent body and if the appeal is grounded, the competent body will appoint a different interpreter. Also, according to the Article 8, Paragraph 9 of the CPC, sentence can not be based on evidences which are obtained against the rules on interpretation. Besides all before mentioned, the suspect or accused may use ordinary legal remedy - appeal against the sentence, based on the fact of violating the right on the interpreter.
Cyprus	According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), suspect, accused or fugitive is entitled to make oral objection (challenge) to the competent authority about: (a) the decision of the authority that he/she does not need interpretation in accordance with this Law, and / or (b) the fact that any interpretation provided in accordance with this Law, is insufficient to safeguard the fairness of the proceedings. (Article 6(1)

Czech Republic	The national legislation does not include a specific right to challenge a decision not granting the interpretation or to complain about the quality of interpretation. All resolutions of a police authority may be challenged by complaints, but in case of resolutions of courts and public prosecutors only when a law stipulates (there is no such stipulation regarding the right to interpretation) and when the authority of a first instance is deciding. However, as mentioned above, in practice issues with not granting the interpretation do not arise as a mere proclamation is sufficient to trigger the right to interpretation. In any case, the lack of interpretation may be challenged within the standard legal remedies (in particular the appeal). The quality of the interpretation may be challenged during the legal acts through objections or requests for change of an interpreter (this right is not specifically enacted, there is no specific legal remedy when the authority refuses to comply either) or within standard legal remedies.
Estonia	The authorities can decide to refuse to provide interpretation only for meetings between the suspect/accused and defence counsel, and it is possible when the authorities find that there is no need for interpretation for a meeting in question (§ 10(21) of CCP). Such refusal can be challenged by way of a complaint (§ 10(9) of CCP). The main provision relating to quality of interpretation is § 162(21) of CCP which states that "A body conducting the proceedings may remove an interpreter or translator if the interpreter or translator does not perform his or her duties as required or if the quality of the interpretation or translation may impair the exercise of the right of defence of the suspect or accused". Based on this provision, a person can request to remove the interpreter, and it is up to the prosecutor (in pre-trial proceedings) or judge (in court proceedings) to decide whether to remove the interpreter or not. There are no regulations on how the prosecutor or the judge must assess the quality of interpretation. § 161(7) of CCP also provides that a suspect or accused or his or her counsel may file a complaint against the provision of a false translation or interpretation by a translator or interpreter pursuant to the procedure provided for in § 228 of this Code.
Finland	In practice there is no effective right to challenge a decision regarding interpretation or to complain about the quality. One may file an administrative complaint at the pre-trial stage to the supervisor or to the either of the two independent supreme guardians of law: the Chancellor of Justice of the Government, or the Parliamentary Ombudsman. If a prosecutor has been appointed already at the pre-trial investigation stage, one can also complain to him/her. When the case is at the court stage, one can appeal to the court regarding problems with the interpretation, and also during appellate proceedings. No specific provisions exist at the pre-trial investigation stage to make a separate decision, if the suspect or his counsel for example complains about the quality and wants the interpreter to be changed. There is a possibility to ask for a decision, but it is not mandatory to give such. No appeal lies, if the investigative authority makes such a decision. During the court phase one could theoretically ask for a procedural ruling on the interpretation, but we have no knowledge of such decisions given. If such decision is given, there is a right to appeal the decision in conjunction with the main subject matter. In practice, if problems arise, they are usually tried to be solved so that the counsel arranges for an interpreter he/she has good experience of. However, concerning more unusual languages, the same problems arise as when the authorities arrange for the interpreter; there simply are not that many, if any in Finland. In such cases the interpreter can be arranged from abroad, even using videoconference.
France	Article D. 594-2 grants the right to challenge the absence or the lack of translation during the interrogation or hearing.
Germany	
Greece	Under Article 233 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, the suspect or accused person has the right to exercise objections against the decision which held that the provision of interpretation is not necessary or when the quality of interpretation is not sufficient. The competent authorities that decide on the objections are the Prosecutor, during the main questioning, the Judicial Council and the Court, during the main proceedings. Furthermore, in

	interpreting the provisions of criminal procedure, the non-appointment of an interpreter, as well as the insufficient interpretation, is a violation of the rights of defense of the accused person and bring about absolute invalidity under Article 171 par. 1d of the Greek Code of Criminal Procedures, which founds ground of appeal of the ruling or decision, according to Articles 484 par. 1a (preliminary procedure) and 510 par. 1A (main proceedings) of the Greek Code of Criminal Procedures. In practice, in order for the accused person to challenge the quality of the interpretation, he/she should: 1. Be aware that a statement has been mistranslated by the interpreter and 2. Convince the authorities for the mistranslation. In practice, it is quite common, the defendants in court to claim that the facts and allegations that they supposedly testified during the preliminary proceedings, do not correspond to what they really said.
Hungary	The suspect/accused may at any time ask for the application of another interpreter.
Ireland	While a person is in custody there is no real opportunity to challenge the quality of the interpretation that is being provided. A prudent and competent defence lawyer will however have their concerns expressed on the record at that point. In pure theory a person held for questioning who requires an interpreter but who complains about the quality of the interpretation could apply for release to the High Court. The reality is that most advisers would prefer a situation where the client could remain silent on the basis that they cannot understand the questions rather than have the situation corrected in the High Court.
Italy	Only together with the appeal of the decision on innocence. If there is a clearly inappropriate translation, it depends from the discretionary decision of the judge the substitution of the interpreter/translator.
Latvia	A decision can be challenged in language that person chooses. If a person is not satisfied with the provided interpreter and he or she demands different interpreter, the interpreter can be replaced.
Lithuania	There is no particular procedure allowing complaints about the quality of the translation provided, neither there is a mechanism that could help to assess and guarantee efficient translation standards. Due to uncontrolled standards of translation, the quality can be questioned and argued through standard proceedings during the pre-trial investigation. The way of the process is rather simple. The lawyer makes a complaint to a higher-ranking prosecutor about the prosecutor's refusal to change a translator. The decision of a higher-ranking prosecutor could be appealed to the pre-trial investigation judge. If a higher-ranking prosecutor also decline to change a translator, it is much more difficult to achieve the change of an unqualified translator by appealing to a pre-trial investigation judge or in the trial. It usually argued by a judge that according to Lithuanian law the change could not be applied. Furthermore, it becomes even more difficult to a defender to argue the quality of translation when for instance the defender does not speak the language which is translated to and from during the pre-trial investigation, the court hearing or necessary interim hearings.
Luxembourg	No information concerning a case where a problem of translation has been raised
Malta	Available
Poland	There are no special provisions in the Polish Code of Criminal Proceedings referring to the right to challenge a decision finding that there is no need for interpretation or to the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings. These issues aren't regulated expressis verbis also by general provisions concerning the right to challenge decisions in criminal proceedings, but such issues could be raise in the appeal against a judgment (as having impact on the sentence).
Portugal	The possibility to complain the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings since, in practice, the claim can eventually be not attended.
Romania	
Slovakia	Decision on assignment of an interpreter by a ruling includes the possibility to challenge the ruling with complaint. Quality is presumed if the assigned interpreter/translator is registered on the official list of interpreters and translators managed by the Ministry of Justice. The Ministry is equally competent to review the complaints related to the interpreter in question. According to the case law (eg Supreme Court file no. 6 To 32/97), if the proceeding in pre-trial stage was interpreted by a person who is not on the list of interpreters, it is not to be considered a serious defect of the pre-trial stage. Different situation would arise should the person not have adequate qualification or omitted to take an oath.

	Apart from criminal law aspects, right to interpreter is equally a constitutional right (Article 47 para 4 Slovak Constitution) and the accused may also file a constitutional complaint.
Slovenia	The suspect or accused has the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings or complain about quality of interpretation at any time during the proceedings. However, during the proceedings the right to challenge or to complain is only in the form of a "notice" made by the accused or his/her lawyer.
Spain	The suspect or accused and his/her lawyer may complain about the quality, as well as the Public Prosecutor. The judge may even discharge the interpreter and appoint a new one.
Sweden	If the quality of the interpretation is insufficient, there is a possibility to exchange the interpreter. An exchange can be made upon request by the suspected person or on initiative by the leader of the interview, the prosecutor or the judge. During the preliminary investigation a decision on interpretation can be challenged by a request to a higher prosecutor. During the court proceedings a decision can be challenged by an appeal to the higher court. A court decision can only be appealed in connection with the verdict or final decision of the court.
The Netherlands	In paragraph IV of the Sworn Court Interpreters and Translators Act contains a complaints procedure with regard to the way in which a sworn translator or interpreter has conducted himself towards the sus-pect or someone else. Furthermore, pursuant to article 276 paragraph 4 NCCP, it is possible to challenge an interpreter in court for reasons of his own. Finally, before the trial judge it is possible to dispute the content of the reports, for reason of a bad translation with the request to exclude the evidence due to a lack of reliability.
UK	**England and Wales** At a police station, if a detainee complains about the quality of interpretation or of translation, the custody officer or (as the case may be) the interviewer must decide whether a new interpreter should be called or a new translation provided (paras.13.10A, 13.10C of the Codes of Practice). At a court hearing or trial, if a defendant complains about the quality of interpretation s/he can make an application to the court. The court must give any direction which the court thinks appropriate, including a direction for a different interpreter.
	Scotland The 2014 Regulations make provision for an accused person to ask for a review of a decision by a constable that he does not require interpretation assistance (reg 5), and to complain if he is not provided with interpretation assistance within a reasonable time or if the assistance provided "is of insufficient quality to safeguard the fairness of the police proceedings" (reg 6). Similarly, where the court determines that an accused person appearing before it does not require interpretation assistance, the Regulations make provision for the accused person to apply to the court for a review of its determination (reg 11), and where he is not provided with interpretation assistance or the assistance is of insufficient quality to safeguard the fairness of the proceedings, he may apply to the court for a direction; the court then "must give such direction as it considers necessary to safeguard the fairness of the proceedings" (reg 12).
	Northern Ireland In practice never seen an application refused- court obviously be concerned re abuse application if won't provide translation

What is the situation in your Member State – covering both national law and national practice - with respect to the right to translation regarding: *(a) what documents are translated in your Member State? do they include any decision depriving a person of his liberty, any charge or indictment, and any judgment? are they provided in a reasonable time?*	
Austria	In Austria, the order as well as the court approval of arrest, any decision on pre-trial detention, the indictment and the judgement. Moreover, the suspect may request the translation of additional documents, if the suspect can explain or if it is evident, that the translation is necessary to safeguard the rights of defence and a fair trial. The translation must be provided within a reasonable timeframe; usually the translations are provided within such a timeframe.
Belgium	According article 22 of the Belgian law of 15 June 1935 concerning the use of the languages in judicial matters any indicted person who does only understand one national language but not the language of the proceedings, may ask a written translation of all the minutes (procès-verbaux), witness testimonies, declaration of the plaintiffs and expert reports. The cost of such translation are covered entirely and definitively by the national treasury. The accused may not be sentenced to pay these costs. According the jurisprudence of the Belgian high court (cour de cassation), art 6.3.e of the Convention on human rights provides not the right to a suspect who does not understand any of the 3 Belgian national languages, to obtain a written translation in his/her own language of the documents of the criminal file. This jurisprudence creates thus a clear discrimination towards not native speaking suspects that the Directive, being now of direct application in Belgium, will however challenge. As mentioned above, a written translation may only be obtained a) in one of the 3 Belgian national languages and b) only for the minutes (process-verbaux), witness testimonies, declaration of the plaintiffs and expert reports. No provision provides for a written translation of the decision depriving a person of his liberty, of the charge or indictment or of the judgment, but a verbal translation of them will be given to the concerned person.
Bulgaria	Prior to the above transposing amendments to CPC the accused persons had the right to have the following documents translated to the language they understood: the ruling of the organ of investigation/the prosecutor by which the charge was brought; the court ruling imposing the measure to prevent evasion from justice (***pre-trial detention included***); the indictment (any change of indictment included); the judgment of the court of the first instance and the judgment of the court of appeal. The amendment added the right of the defendant to have the judgment of the Supreme Court of Cassation translated to the language she/he understood in case an appeal of cassation had been submitted. The general opinion of judges and lawyers is that translations are provided in a reasonable time. Excusable delays are mostly due to the need to translate voluminous documents or to translate documents to a “rare” language.
Croatia	According to the Article 8 of CPC, the suspect or accused person has the right to have the following documents translated to the language they understood: instruction on legal remedy, arrest warrant, indictment, private sue, avocation, statement of charges and judgment, decision on ordinary and extraordinary remedies.
Cyprus	According to section 5(1) of the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014) “in order to ensure that suspected or accused persons are able to exercise their right of defence and to safeguard the fairness of the proceedings the competent authority, provides within a reasonable period of time, to the suspect or the accused who do not understand the language of the criminal proceedings concerned with a written translation of all documents which are essential.”

	For the purposes of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), essential documents are considered (a) the arrest or/and detention warrant, the indictment, any judicial decision and any order within the procedures and (b) any other document, which is considered essential by the competent authority, either ex officio either following a justified request submitted by the suspect or the accused person or the lawyer of the suspect or accused person. (Article 5(2(a)) In order to safeguard the fairness of the proceedings, in the process of executing a European Arrest Warrant, the competent authority, within a reasonable time, provides to the fugitive, who does not understand the language in which the European Arrest Warrant was prepared or translated, with a written translation of the document. (Article 5(4))
Czech Republic	Section 28(2) CCP states (through an exhaustive list) which documents have to be always translated to the accused or suspect (unless he, after being advised, declares that he does not request the translation): resolution on the commencement of the criminal prosecution, resolution about custody, resolution about order of the observation of an accused in medical institution, indictment, agreement about guilt and penalty and proposal for its approval, proposal for a punishment, judgement, criminal order, decision on appeal and conditional termination of criminal prosecution. Moreover the new implementing legislation introduced the right to have translated also other documents under conditions set in Section 28(4) CCP (see below). The legislation does not include time-limits for the delivery of the translated documents. However, any time-limits for legal remedies of the defendant are counted from the delivery of the translated document.
Estonia	According to § 10(5) of CCP, If a suspect or accused is not proficient in the Estonian language, the text of the report on the detention of the suspected [i.e. a document based on which a person can be held by the police for up to 48 hours], arrest warrant [a court order by which a person is remanded in pre-trial detention], European arrest warrant, statement of charges and judgment translated into his or her native language or a language in which he or she is proficient shall be communicated to him or her. According to § 10(8) of CCP, translation must be provided within a reasonable period of time so that this does not impair the exercise of their rights of defence.
Finland	The Criminal Investigation Act provides: “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 referred to in section 12, if translation is necessary to ensure the right of the party”; and “Notwithstanding the provisions in subsection 1, an essential document or a part or summary thereof may be translated verbally for a party, unless legal safeguards for the party require that the document be translated in writing”. As can be read from the wording of the provisions, the translation of documents is at the pre-trial investigation stage done on a case-by-case basis. The National Police Board has given written instructions to local police stations, but the instructions do not contain any more specific guarantees to translations. According to information received from the largest police district in Finland, the Helsinki police district, in practice the pre-trial investigation reports are not usually translated. However, the instructions by the National Police Board contain a “comprised letter of rights” to a suspect, in which it is stated that a translation is always given of a decision by the police to arrest a suspect, a detention order by the court, possible charges/indictment and a judgment. It is further stated in this letter of rights that the translations can be given orally when the legal protection of the suspect/defendant does not require the documents to be translated in writing. In practice the decision to arrest and the detention order are not usually translated in writing but orally, whereas the charges and the judgment usually are translated (also) in writing.

	The Criminal Procedure Act provides that the defendant is entitled within a reasonable time to a written translation of the indictment and of the judgment insofar as they concern him/her. The defendant is also entitled to a written translation of a decision in a criminal matter and other relevant document or a part of it, insofar as the translation is necessary in order to protect the legal safeguards of the defendant. However, the translation can also be given orally, if the legal protection of the concerned party does not require a written translation. In practice, translation of documents varies. However, after the implementation of the Directive – at least according to information received from the District Court of Helsinki – stricter rules have applied. Usually the indictment is translated and served on the defendant when he/she is subpoenaed to court. And if the judgment is not given orally in Court, the judge usually inquires whether or not the defendant wants a written translation of the judgment. If the defendant wants a written translation, we have not encountered problems in receiving such. Regarding coercive measures, the request for detention is usually interpreted orally to the suspect. This has mainly to do with quite strict time limits; the request is usually ready in Finnish/Swedish the day before (or even the same day) the hearing is held and there is simply no time to translate the document in writing. There are no specific time limits for translation of the documents in law or in practice. During pre-trial interrogations, for example documents are usually translated orally by an interpreter and they are not anymore translated in writing, at least in practice even though the law provides for such possibility. There have been problems especially in more complicated cases in which also the material can be thousands or tens of thousands of pages, and the police simply decline to translate anything of the pre-trial material. In one case it was referred to by the Chief of the National Bureau of Investigation that since the defendants had legal representation by a counsel capable of going through the material, there was no need to translate any documents in writing, especially when the documents considered relevant (by the police) had been translated orally during the interrogations. In practice, the duty of the authority was transferred to the counsel in question.
France	Article 594-6 provides that only essential decisions during the proceedings are subject to translation as such : - provisory detention, - prorogation of provisory detention, - overruling of petition for release of freedom, - all summons before courts, - all decision deciding to sent an accused person before a trial court. No provision rule the timetable of such translations.
Germany	
Greece	Under Article 236A par.1 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, suspects or accused persons who do not understand the language of the criminal proceedings are provided with a written translation of all the essential documents, i.e. any decision depriving a person of his liberty, any charge or indictment and any judgment relative to the category. Yes, in accordance with the present Article, within a reasonable time. In general, the indictment is translated in writing, if the defendant is referred to trial. The remaining material in the file is communicated orally by the counsel. In police questioning, usually, the defendant is informed briefly and verbally by the authorities about the charge and states (in his testimony) that he/she has been informed.
Hungary	Only two documents are translated in written form: the charge submitted by the prosecutor and the final decision of the court. Usually it takes months to receive the translation of such documents.

	In case of the newly enacted provisions in connection with the procedures against the refugees/migrants, the authorities are not obliged to translate in written form the charge and the decision of the court. Translation may be made orally on the trial by the interpreter.
Ireland	As stated above the general rule is that only oral translation is provided. This is undoubtedly a resource driven approach. During the arrest phase there is simply no way of compelling the translation of written documents, and the charge that would be handed to the suspect at the end of the questioning will be in the English language. Once the case proceeds to Court it is open to the defence to make an application that the materials be translated in written form. These applications are rarely made and generally only in the more serious cases. The usual approach is that the documents are considered during a consultation with the client when a translator orally translates them. This is highly unsatisfactory but it is as much a failure on the part of the defence lawyers in not making such applications as it is the reluctance of the authorities to volunteer translations.
Italy	Yes, there is a problem about reasonable time.
Latvia	All procedural document are translated, the translation can be provided in written or orally, depending on situation. They include any decision depriving a person of his liberty, any charge or indictment, and any judgment. The translation is provided with undue delay.
Lithuania	According to Article 8 of the Criminal Procedure Code (CPC) of Lithuania, any documentation from the case that are, under the procedures directed by the CPC, provided to the suspect or defendant and any other participants of the criminal proceedings have to be translated to their native or any other language that they are fluent in. This provision covers all the decisions depriving a person of his/her liberty, notifications of suspicion, acts of indictment, judgements and court's decisions. The law does not foresee the time limits for serving these documents to the suspect or accused but in practise they are provided in a reasonable time.
Luxembourg	All decisions depriving a person of liberty are fully and immediately translated and a copy in their language of the arrest warrant, national or european, is remitted to the concerned person. The decisions of the chamber of council specially of appeal is translated on request of the person, but the practise is that the president ask if translation is needed after the audience and if the person renounces to a translation of the decision of the chamber of counsel, he has to sign the "book of audience " in order to materialise such a refusal. In addition to this the lawyer has to sign even though he has no influence on the decision of the person who refuses such translation at the end of an audience. Also the person has not been informed by the president of the consequences of his refusal, and the signature of the lawyer is a fake, which just serves to keep the appearance safe. Such a procedure is in the eyes of undersigned highly criticable and very not very loyal. Charges, indictments and judgments are translated in reasonable time, and before the delay of appeal has expired, no real problem concerning this aspect of translation.
Malta	Salient documents are translated into the accused's language or a language he understands. Generally provided in a reasonable time.
Poland	Documents which are properly translated include decisions depriving a person of his or her liberty, his or her charges, indictments or judgments. According to the Article 72 § 3 CCP proceedings documents like: a decision on the presentation of the charges, a decision on the supplement of the charges, a decision on the amendment of the charges, a bill of indictment and a judgment subject to appeal or terminating (concluding) the proceedings shall be served upon a suspect or an accused (also upon his or her lawyer) together with the translation. Such translation is made ex officio. In provisions of the Code of Criminal Proceedings there is no demand that the translations of the mentioned documents should be prepared in a reasonable time. In Poland, the practice in this matter is heterogeneous, but generally translations of essential decisions in criminal proceedings are prepared and served upon interested suspect or accused (also upon his or her lawyer) in a reasonable time. If the translated decision terminating the proceedings isn't challengeable it's possible – on approval of a suspect or an accused – to conclude with oral pronouncement of the decision.

	According to the Article 204 § 2 CCP a translator shall be summoned whereas there is a need to translate into Polish a writing prepared in a foreign language or conversely – whereas there is a need to acquaint a party (a suspect or an accused) with the taken evidence. Particular provisions of the Code of Criminal Proceedings refer to translation of documents connected with criminal proceedings in the area of international relations (Articles: 589g § 6, 607c § 2, 607l § 1a, 607zd § 5, 611fa § 4, 611fn § 6, 611w § 4).
Portugal	The documents which are essential to ensure the right of defence may be translated if the defence ask for; the rule is the oral translation. The translation is not always done in a reasonable time.
Romania	
Slovakia	According to Sec 28 para 4 CCP, if there is a need to translate the records of the testimony or other document, a translator is assigned by an order. The accused has a right to have the following documents translated: ruling on laying the charges, ruling on internment, indictment, agreement on the guilt and punishment, draft of the agreement, judgment, decision on the appeal, decision on conditional suspension of the criminal proceeding; the accused may waive this right and must by informed on the possibility of a waiver, as well as on the possible consequences of the waiver. Translation is supplied by the body in charge of the act. There is no specification of time limit but in practice the requirement of reasonable time is respected. Suspect who is arrested has a right to have the instruction on his rights in criminal proceeding translated. If the translation is not available, it shall be interpreted and the translation shall be provided without undue delay.
Slovenia	The suspect or accused person shall be provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, any judgment, summons, decision on exlusion of evidence (or rebuttal of the motion to exclude evidence) and decision on excluding a judge. The translations are provided in a reasonable time.
Spain	There is a restriction. Only documents, or part of them, that affect to the right of the defence. Decisions about deprivation of liberty, the indictment and the judgment and sentence must be translated (at least, the important parts of them). Delays are common.
Sweden	Suspects or accused persons are entitled to written translations of documents or at least the relevant passages of such documents if a translation is essential for them to exercise their right of defence. In practice, written translations of documents are very rarely provided to the suspect or the accused person during the criminal proceedings. A written translation of a decision depriving a person of his liberty or a judgment is generally not considered necessary if the decision has been delivered orally in connection with the hearing, at which an interpreter has been present.
The Netherlands	a) The statutory framework allows the suspect to have translated in writing (partly or wholly), into a language customary to him, documents he has knowledge of and which he deems necessary for his defence. This reasoned request must be submitted in writing and describe as clearly as possible the proce-dural documents or parts thereof that relate to the request (article 32 a NCCP). The terms of this Directive under article 3 are that the suspect has a right to translation of essential doc-uments relating to the case within a reasonable term. Paragraph 2 names as essential documents deci-sions involving deprivation of liberty, the indictment or writ of summons and verdicts. In the Dutch situation, in all cases when taken in police custody, a written statement is issued to the suspect as soon as possible in a language he has thorough command of mentioning the criminal offence he is suspected of (article 59 paragraph 7 NCCP). In case of no police custody but merely a detention for investigation at the police station, the content of the order will equally well be given orally in a language he has thorough command of (article 61 paragraph 8 NCCP).

When a suspect is detained for a longer period of time, when custody or imprisonment is ordered, a translated transcript will be issued in case the suspect has no (thorough) command of the Dutch language.

Legal proceedings start with a summons to appear in court, for which the law provides that a translated transcript must be sent to the suspect who has no (thorough) command of the Dutch language (article 260 paragraph 5). On the basis of the mutatis mutandis provision in article 412 paragraph 3 NCCP, all this also applies in the framework of appeal. The explanatory memorandum shows that only the place, date and time on which the suspect must appear before court, a short description of the criminal offence and a number of important statements containing the suspect's rights, like, for instance, the notice to an interpreter (etc.), are to be earmarked as relevant parts.
All this implies that the complete text of the indictment is not earmarked as being essential, whereas suspects who have no (thorough) command of the Dutch language are probably not familiar with the Dutch way of indicting. The legislative proposal wrongfully explains the relevant parts of the indictment in a too restrictive way. This minimalistic explanation is contrary to the text and spirit of the Directive as well as the way in which, according to consistent case law of the European Court of Justice, provisions should be implemented and interpreted. For the practical effect can be that a 16-page-indictment containing an accusation of, for instance, complicated fraud, would be considered sufficiently translated ac-cording to national law in case the suspect is notified that he is being suspected of committing forgery of documents in the Netherlands between 2004 and 2012.

Finally, a request can be submitted to the court by the suspect who has no (thorough) command of the Dutch language to supply him with an extract of the verdict when the suspect has not been present to hear the verdict (article 365 paragraph 6 NCCP). The rationale thereof is that, if a suspect is present in court while the verdict is delivered, an interpreter is present (as required by law) who translates the judge's verdict on the spot. All this indicates (again) a minimalistic interpretation of the provision since nowadays for a suspect present at the verdict can surely have an interest to receive the verdict in writing and reread it. Furthermore, an abstract of the verdict, which mentions which criminal offence found proved the verdict constitutes and the place where and at which time the criminal offence has been committed, must be translated (article 365 paragraph 6 sub b NCCP). An interpretation more in conform-ity with the Directive should lead to translation as well of the factual behaviour (or omission thereof) on which the sentence is based, should be translated, as well as of the refutation of the defences and the motivation of the punishment.

Given the mutatis mutandis provision of article 415 NCCP - which declares article 365 NCCP equally ap-plicable to the proceedings in appeal - the right to translation also applies to the ruling of the Court of appeal.

The rulings of the Supreme Court appear not to fall within that regulation since article 365 paragraph 6 has not been added to article 444 paragraph 4 NCCP's mutatis mutandis provision.

It must be noted that it is possible to request a written translation in case the occasion arises that the suspect is issued with a penalty order. With a claim to the provisions of article 257a paragraph 7 NCCP, the public prosecutor can be requested to provide a translation. All this is not consistent with the Directive. Article 1 paragraph 3 of the Directive stipulates that in case the law of a member state "provides that in case of minor criminal offences a sanction will be imposed by another authority than a court competent for criminal matters, and that appeal against this sanction can be lodged with this court, the Directive is only applicable to the proceedings before that court". On the basis hereof the Dutch legislator apparently took the position for the Directive not to be applicable to the penalty order since there is a possibility to apply to the court in case one does not agree with the penalty order. (A penalty order is an order of the public prosecutor which finalises the criminal proceedings and which can be formally ex-ecuted without being judged by Court unless the suspect files an objection against the penalty order).

However, this reasoning does not hold water because it fails to recognise that, on the basis of the Public Prosecution Service (Settlement) Act of 7 July 2006, the penalty order is not limited to "minor criminal offences". The penalty order can after all be issued in respect of minor offences and crimes

	punishable with no less than 6 years imprisonment. It is conceivable that penalty orders will be issued for which the suspect had no prior contact with Dutch authorities. In that case the penalty order will have to be issued translated (unless the suspect evidently has command of the Dutch language). The suspect's possibility to raise an objection becomes illusory if he cannot be informed of that possibility due to a language problem. Therefore, not only the possibility of raising an objection has to be translated, but, of course, also the reason and the nature of the penalty order itself so that suspect can make the decision whether or not to raise an objection on proper grounds. In summary >Taking stock of the situation, the Dutch legislator has at any rate earmarked the documents mentioned in article 3 paragraph 2 of the Directive paragraph 2 as 'essential'. This demonstrates a rather limited interpretation of the Directive since paragraph 2 only gives a list of the documents that are essential 'at any rate'. >there is a right/possibility to request translated copies of the suspicion that has arisen, of decisions regarding the deprivation of liberty as well as the verdict. All this has really gained momentum and so far it is impossible to say to what extent an unambiguous line exists with regard to which procedural documents can be earmarked as essential and which not. It is neither known to what extent budget aspects could play an important role in the future.
UK	**England and Wales** For documents provided to a suspect in a police station, Annex M to the Codes of Practice defines which documents are essential that must be translated for a suspect who cannot speak or understand English. The documents include (1) grounds for authorization to keep the person in custody before and after charge given by the custody officer and the review officer; (2) authorization to extend detention without charge by a superintendent; (3) a warrant of further detention and any extension issued by a magistrates' court; (4) authority to detain in a warrant of arrest issued in connection with criminal proceedings; (5) written notice showing particulars of the offence charged; (6) written interview records and written statement under caution. It is important to note that the custody officer may instead authorize an oral translation or oral summary of documents (1) to (5) – but not (6) – provided by an interpreter as long as that "would not prejudice the fairness of the proceedings by in any way adversely affecting or otherwise undermining or limiting the ability of the suspect in question to understand their position and to communicate effectively with police officers, interviewers, solicitors and appropriate adults".
	Scotland In police custody, documents authorising deprivation of liberty, or charging him with an offence, are deemed to be "essential documents" and require to be translated in writing within a reasonable time (2014 Regulations, reg 4). During court proceedings, the following documents are considered to be "essential documents" and therefore require to be translated in writing within a reasonable time: a document authorising deprivation of liberty; a document charging a person with an offence (in Scotland, this would include criminal petitions, indictments and summary complaints); court judgements; and any other documents which the court determines to be essential for the purpose of safeguarding the fairness of the proceedings (2014 Regulations, reg 9 and 10). As part of the Code of Practice (CoP), there are agreed timescales for the provision of translated documents to the accused. These are as follows: Criminal petitions will be translated into a language that the accused can understand by COPFS within a reasonable time of the accused's first appearance in court. This will normally be within 3 working days. Indictments will be translated into a language that the accused can understand by COPFS within a reasonable time from issue of the Indictment in English. This will normally be within 7 working days.

	Only the part of the indictment which contains the charge(s) against the accused will be translated (as provided for by reg 9). In relation to summary proceedings, COPFS will (in cited cases) translate the summary complaint, where the accused person has indicated that they require a translated version. This will normally be within 7 working days of receiving notice of such a request. In relation to all other summary cases, the summary complaint will be translated into a language that the accused can understand by COPFS within a reasonable time after the accused's first appearance in court. This will normally be within 3 working days. Written judgments (such as appeal opinions) will be translated into a language the accused can understand by SCS within a reasonable period of time. This will normally be within 14 working days. Orders of court which are required by any enactment to be provided to the accused person in writing will be translated into a language the accused can understand by SCS within a reasonable period of time. This will normally be within 7 working days. Arrest warrants fall outwith the terms of the directive, but authorise (at least temporarily) deprivation of liberty. It has been agreed by Criminal Justice partners that extracts of warrants to apprehend issued to Police Scotland by either Crown Office and Procurator Fiscal Service (COPFS) or Scottish Court and Tribunal Service (SCS) will be issued in English. An oral translation of the terms of the warrant will be provided through use of an interpreter arranged by the police following apprehension to assist the accused person in police custody. Where a request is made for a written translation of a warrant by a person who is in police custody prior to their appearance at court, Police Scotland will record the request and notify the issuing organisation (either COPFS or SCS depending on the nature of the warrant). SCS or COPFS will then place the request before the court (when the arrested person appears) for consideration and determination. In Scotland, a person can be released from police custody on an "undertaking" that they will present themselves at court on a given date. Where an accused has signed a written undertaking form and an oral summary has been provided through use of an interpreter, Police Scotland then arrange for a translated version of the Undertaking Form, or relevant part thereof, to be provided to the accused prior to their appearance at Court. Police Scotland record the details and notify COPFS. In addition, Police Scotland advise COPFS within the Standard Prosecution Report of all reviews undertaken/complaints raised and provide details of all relevant circumstances including details of any determination made, any direction given and any action taken.
	Northern Ireland In practice oral hearing interpreter present defendant present or on video link. Not dealt with in their absence Could get copy of written judgement if requested. Almost never happens

(b) how the decision is made on what other documents are essential? who takes that decision? who can apply for such a decision? whether such decisions include documents relating to a right to appeal?	
Austria	The decision on other essential documents to be translated is made on request of the suspect (or the legal counsel). The decision is made by the police or the prosecutor or the court, depending on the stage of the proceedings.
Belgium	(see point answer to point a)
Bulgaria	The decision on whether the translation of other documents is essential (*"for the exercise of the right to defence"* as the Bulgarian legal rule puts it) is made by the organs of pre-trial investigation or by the courts. They make an assessment of their own as to what is necessary for "the exercise of the right to defence". The decision to have the documents translated either is made *ex officio* or upon an explicit request in writing by the accused person or her/his counsel for the defence. Documents relating to a right to appeal may be included in the decision and this is a common practice. During the discussions on how the requirements of the Directive were to be transposed, an idea was put forward which was very useful in my view. It was proposed that the explicit requests in writing of the accused persons or their counsel(s) for the defence to have some documents translated should imperatively bind the deciding bodies because these documents were essential *per se* (e. g. documents relating to the right to appeal, various pieces of written evidence, etc.). In other words, the idea was to restrict the power of the deciding bodies to make an assessment of their own in all cases. The idea was not accepted and now we are in a situation where practically all documents relating to the case may be translated but only upon the discretion of the organs of pre-trial investigation or the courts to decide whether the documents are essential or not.
Croatia	As it is mentioned before, the following documents have to be translated to the language they understood: instruction on legal remedy, arrest warrant, indictment, private sue, avocation, statement of charges and judgment, decision on ordinary and extraordinary remedies. If it is necessary, the competent court can decide to translate every evidence which is necessary to accused or suspect person for using his procedural right on defence.
Cyprus	According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), the competent authority, either ex officio either following a justified submitted request by the suspect or the accused or the lawyer of the suspect or accused person makes a decision on the documents that are essential. (Article 5(2)(β)) Documents relating to a right of appeal are included
Czech Republic	See the previous answer to understand that the Czech legislation makes a difference between documents that needs to be obligatorily translated as set in Section 28(2) CCP and other documents, whose translation may be requested as set in Section 28(4) CCP. In the latter case the competent law enforcement authority makes the decision. Section 28(4) CCP stipulates as a benchmark "if it is necessary for the guarantee of the fair trial, in particular the proper exercise of the defence right, in the extent determined by a law enforcement authority, which is completely necessary for the acquaintance of the accused (note: this right belongs also to a suspect according to Section 28(5) CCP) with the facts he is laid guilty of". Any document may fall within this category, there is no limitation to certain types only.
Estonia	According to § 10(6) of CCP if a suspect or accused is not proficient in the Estonian language, he or she or his or her counsel may submit a reasoned application for translating a document which is significant from the point of view of understanding the content of the suspicion or charges in the criminal matter or for ensuring the fairness of the proceedings into his or her native tongue or into another language in which he or she is proficient. If the body conducting the proceedings finds that the application for translating the documents is not justified, such body shall formalise the refusal by a ruling.

	The decision is taken by the body conducting the proceedings (police, prosecutor, or judge). The scope of documents subject to request for translation is broadly defined, and with this is mind, there are no further regulations as to how the authorities shall determine whether the application is justified or not.
Finland	At the pre-trial investigation stage the head of investigation makes the decision and the suspect/his/her legal counsel can apply it for. One can lodge an administrative complaint to the chief of police or to the prosecutor against such a decision if one has been assigned to the case. However, this is not an effective remedy, since in the administrative complaint the person deciding it only considers whether the head of investigation has acted in accordance with the law. Since there is a wide discretion on what documents are necessary, a complaint is usually pointless to make. During the court proceedings stage the court makes the decision on what documents are considered essential. We refer to what has been stated above; in theory one could ask for a procedural decision on the right to a translation but there are no specific provisions in law regarding this. During appellate proceedings one can refer to the right to a fair trial in order to get documents translated. Especially if the defendant is in court without a counsel, written instructions on the right to appeal are in practice always given in a language he/she understands.
France	See above.
Germany	
Greece	Under Article 236A par.1 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice defendants or their lawyers may submit a reasoned request for the designation of documents or passages of documents as essential. The competent Council takes the decision. Yes, such decisions include documents relating to a right of appeal. In practice the investigator usually takes the decision. The application could be submitted either by the defendant or the defence counsel at every stage.
Hungary	Only the competent authority may make a decision on the translation of any other documents. Even the suspect/accused and the legal counsel may apply for such a decision.
Ireland	The police authorities will never volunteer translated documents to a suspect. Courts may direct the Director of Public Prosecutions to provide translations of documents in a particular case. Where such an application is made it would cover the statements of evidence and the charge. In many cases the disclosed materials are voluminous and it would be exceptional to get a Court to agree to provide translation of materials being disclosed by the prosecution but which were not intended to form part of the prosecution case.
Italy	A decision of liability, an arrest warrant or any other decision depriving the liberty must be translated.
Latvia	All procedural document are translated, the translation can be provided in written or orally, depending on situation.
Lithuania	The above-mentioned documents (a) must be translated and served to the suspect and the accused. The essential documents, according to the Lithuanian law, are the documents indicated in the CPC.
Luxembourg	The translation of “important documents” is guaranteed. Sometime the lawyer asks for the translation of the whole file. In this case in order to reduce the costs the public prosecutor asks the lawyer to indicate the important documents he wants to have translated. The lawyer indicates the documents, which he considers important, and in nearly all the cases these documents are translated on instruction of the public prosecutor. This system works quite efficiently and I have no personal negative experience, or heard negative experience from colleagues. It also belongs to the lawyer to characterise the documents which are really important for the case.
Malta	Decision normally made by the Judge or Magistrate, with or without submissions from the prosecution or defence.

Poland	In Polish Code of Criminal Proceedings there is no legal term 'essential documents' but in the scope of this term are situated such documents as: every decision on deprivation of liberty of a certain person, decisions on charges, indictments and court judgments. Such documents seem to be essential because of its nature. There is no provision including a procedure on making a decision which document in criminal proceedings is considerable as an essential one. In practice such decisions – if they're made - include for instance police reports, prosecution or court minutes and other documents relating to the right to appeal. As well as there is no provision clearly indicating an appropriate subject deciding which documents are essential. In practice such subjects are officials of bodies responsible for investigation or criminal proceedings in its particular stages: police officers, prosecutors, judges. Polish criminal proceedings regulations don't point out subjects entitled to apply for a decision showing that a certain document is essential for criminal proceedings. In practice - in accordance with other proper regulations of criminal proceedings – there are no obstacles to agree that a suspect or an accused (also his or her lawyer) may apply to a proper authority for such decision.
Portugal	The judicial authority takes the decision about what documents are essential and it is possible to apply for that decision.
Romania	
Slovakia	According to Sec 28 para 5 CCP, upon the request of the accused or even without the request, the authority in charge of the proceeding may decide that other documents be translated (to the extent determined by that body) should it be necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence. The accused may waive this right.
Slovenia	The competent authorities (police; judge) shall, in any given case, decide whether any other document is essential. Suspected or accused persons or their legal counsel may submit a reasoned request to that effect. How this right is safeguarded in practice is unclear since the right has been implemented in the Slovene law with the amendement to the Law on Criminal Procedure from November 21, 2014 and became valid on December 6, 2015.
Spain	The decision is taken by the authority that runs the relevant procedural act (police, public prosecutor or judge). The documents related to the right of appeal (judgments and sentences) are translated.
Sweden	In principle, the investigative authorities and the courts shall voluntarily examine whether a translation is necessary. In practice, an examination is made only upon request from the suspected person or his or her lawyer. A translation or partial translation is generally not considered necessary if a lawyer is appointed to the suspect. During an ongoing investigation, and if the relevant material is held by the investigative authority, it is the leader of the investigation who decides whether a translation shall be made. If the material is held by the court, the decision is made by a judge. A court decision contains information on the right to appeal.
The Netherlands	The legislative framework confirms that the suspect is allowed to have wholly or partly translated in writ-ing in a language he has a thorough command of, all documents he is allowed to take note of and which he deems necessary for his defence. This request must be submitted in writing and must describe which specific procedural documents or parts thereof relate to this request. The request must be duly rea-soned, which reasons must in particular go into the question whether in the given case a written transla-tion of the relevant document or relevant passage is deemed necessary for conducting a defence and the assistance of an interpreter who can orally translate the relevant documents or passages does not suffice (Explanatory Memorandum, Parliamentary Papers II 2011/12, 33355, 3, p. 15). Depending on the stage of the proceedings, translations will be requested from the public prosecutor or the court (article 32a paragraph 2 NCCP). If, during the preliminary investigation, the public prosecutor denies the request for translation of procedural documents, the suspect or his counsel can lodge a notice of objection with the examining judge (article 32a paragraph 3). In case the investigation in court has already started, the court is authorised to take a decision regarding the question whether

	certain proce-dural documents have to be translated for the suspect. There is no possibility of raising objections against a negative decision. However, if a (repeated) request in appeal is denied by the Court of Appeal at the trial, this is a decision that can be submitted in appeal to the court in cassation. <u>In summary</u> >there is a right/possibility to request translated copies of the suspicion arisen, of decisions pertaining to the deprivation of liberty as well as the sentence. >the court or the public prosecutor decides - on the basis of a duly reasoned request by the suspect - whether they concern documents of which translation is necessary for the defence. >it is possible to raise objections before the examining judge against the decision of the public prosecutor >It is not possible to raise objections against the decision of the trial judge - however, the defence is free to repeat the request in appeal, after which assessment in cassation is possible.
UK	**<u>England and Wales</u>** In the police station, the decision as to what other essential documents are to be translated is made by the custody officer. There is nothing to prevent a suspect or a legal representative asking for documents other than those identified in Annex M to be translated. There is no 'right of appeal' against the decision of a custody officer to refuse to arrange for the translation of documents which the suspect or his/her legal representative in a formal sense, although the suspect can ask for the 'Duty Inspector' to attend and review the decision of the custody officer. Whilst Duty Inspectors are responsible for all those in custody, their attendance at a place of detention (whether a police station or some other authorised site) is not guaranteed. Often Duty Inspectors will have responsibility for detainees in a number of police stations across a wide geographical area. In criminal proceedings before a Magistrates' Court or Crown Court, on the application of the defendant or on its own initiative, the court may require a written translation to be provided for the defendant of any document or part of a document, unless the translation of that document, or part, is not needed to explain the case against the defendant, or the defendant agrees to do without and the court is satisfied that the agreement is clear and voluntary and that the defendant has had legal advice or otherwise understands the consequences. It is clear from this part of the Crim PR that the trial judge has a wide discretion as to what documents are translated for the defendant. It is only where a document is not needed to explain the case against the defendant that translation is not required. The term document is not confined to documentary exhibits: it incorporates written witness statements which are provided to the defendant as part of prosecution disclosure in advance of the trial. This provision in the Crim PR is supported by a similar safeguard in the National Agreement which provides that the right to an interpreter applies not only to all oral statements made at trial but also documentary material. While all material need not be translated the agreement requires the translation of "documents or statements necessary for him to understand the proceedings and to have a fair trial."
	<u>Scotland</u> The Criminal Justice Partners have collectively agreed what they consider to be "essential documents"; this is reflected in the 2014 Regulations, and discussed above. However, the court may determine that other documents may also be considered essential to the fairness of proceeding and consequently direct the Crown or the court service to provide translations of additional documents to the accused. The decision to classify a document as "essential" may be taken by the Court either on the application of the accused person, or of its own accord (2014 Regulations, Reg 10). The 2014 Regulations do not impose any restriction on the categories of documents which might be deemed "essential"; they define "essential" as "essential for the purposes of safeguarding [the] fairness [of court proceedings]". This definition is sufficiently broad to encompass, in an appropriate case, documents relating to a right to appeal. Whether or not a document is "essential" within the meaning of the 2014 Regulations is a matter for the discretion of the court.
	<u>Northern Ireland</u> Defence team in conjunction with defendant

(c) decisions regarding partial translation of documents?	
Austria	The translation may be limited to such parts of the documents which are necessary so that the suspect understands the indictment (§ 56(4) StPO). The decision may be challenged.
Belgium	(see point answer to point a)
Bulgaria	The answer is identical to the previous one. The organs of pre-trial investigation or the courts may decide that parts of certain documents are not relevant to "the exercise of the right to defence" and may refuse to provide translation.
Croatia	(see point answer to point a) and b)
Cyprus	According to Article 5(3) of the Interpretation and Translation during the Criminal Proceedings Law (L. 18(I)/2014) the competent authority is not obliged to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them. (Article 5(3))
Czech Republic	The national legislation does not allow only partial translation.
Estonia	Our regulations do not provide the option of partial translation of documents.
Finland	See previous answer; same applies.
France	Only the judges and the prosecutor have the right to decide which part of a documents needs to be translated or not, being taken into account that oral translation are always possible. (Circulaire du 31 octobre 2013, page 4).
Germany	
Greece	Under Article 236A par.1 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and national practice, suspects or defendants have the right to translation of passages of essential documents which are relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.
Hungary	Only the documents as above is translated.
Ireland	The trial judge would be the final arbiter of any dispute as to whether a document ought to be translated at all, and whether if to be translated in whole or in part.
Italy	On request of the defence counsel or the accused, the Judge decide to order the translation if the listed documents are essential to prepare the defence.
Latvia	The translation is provided according to persons needs.
Lithuania	The Lithuanian law does not foresee the possibility of partial translation. Thus the whole document should be translated.
Luxembourg	No information on such documents, if a decision is translated it will be entirely translated.
Malta	Same as above.
Poland	The Polish Code of Criminal Proceedings doesn't contain provisions in this field but there are no obstacles to make a decision regarding partial translation of documents. According to one of the judgments of the Supreme Court of the Republic of Poland, there is no requirement of translation of the whole files of the concrete criminal case but only materials in such files which are necessary to ensure a suspect or an accused a right to a fair trial (judgment of the Supreme Court of the 4th of April, 2012, III KK 133/2011).
Portugal	Yes.
Romania	
Slovakia	Decision on partial translation must be recorded in the Minutes.
Slovenia	See the answer under (b) above.
Spain	The translation is, in the majority of cases, only of the essential parts of the document, decided by the authorities noted above.
Sweden	See the answer under (b) above.
The Netherlands	As described above, the suspect / defence has to give reasons why a specific part of a procedural document must necessarily be translated. It is incorporated in the law that a sentence only has to be explained in parts - if indeed a right of translation exists. The question which parts of the sentence have

	to be considered as relevant, the legislator has followed the substantive parts that have to be included in a sentence notification (decision on the formal questions, decision with regard to the offence charged, qualification of the proven facts and punishment or measure imposed) in accordance with article 366 NCCP. See the remarks under a. When the suspects requires a full translation (being more than already has been translated in accordance with article 365 paragraph 6 NCCP) of the court's sentence, he must submit a request to that effect to the court of appeal (Explanatory Memorandum, Parliamentary Papers II 2011/12, 33355, 3, p. 13). In summary >It is laid down by law that a sentence will only be translated in parts and upon request.
UK	**England and Wales** As above.
	Scotland The Criminal Justice Partners have collectively agreed which parts of a document require to be translated. All sections that relate to the charges against the accused and the evidence to support those charges, will be translated. There are other parts of documents which are not considered essential in that they are not related to the liberty of the accused or to proving the charges. For example lists of productions and witnesses appended to an indictment.
	Northern Ireland Defence team

(d)	*challenges to the decisions made in (a), (b) and (c) above?*
Austria	The same procedure for challenging of such decisions applies as for decisions on the interpretation, i.e. objection (§ 106 StPO), complaint (§ 87 StPO) and application (§ 281(1)4 StPO).
Belgium	During the criminal investigation, toward the Accusation Chamber who is legally entitled to survey the regularity of the criminal investigations, and the criminal courts on the later stage of the proceedings
Bulgaria	The right to challenge these decisions is granted by Article 395g of CPC (чл. 395**г in Bulgarian)**. The ruling of the investigating authority refusing translation may be appealed before the respective prosecutor. The decision of the prosecutor is final and is not subject to judicial control, which, in my view, negatively affects the effective exercise of the right to translation. The ruling of the court refusing translation may be appealed before the upper court.
Croatia	See previous answer; same applies.
Cyprus	You can challenge decisions made in (a), (b) and (c). According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), suspect, accused or fugitive is entitled to make oral objection to the competent authority about: (a) the decision of the authority that he/she does not need translation of a document in accordance with this Law, and / or (b) the fact that any translation of a document or partial translation of a document or/and interpretation provided in accordance with this Law, is insufficient to safeguard the fairness of the proceedings. (Article 6(1(α) and (β)) The competent authority decides directly on the objection made under subsection (1), recording in the minutes of the procedure both the oral objection and its own reasoned decision on the objection.
Czech Republic	As for decisions mentioned in (a) as set in Section 28(2) CCP, they have to be obligatory translated, unless requested otherwise. Should the authorities (rather theoretically) fail to comply, such failure could be challenged within standard legal remedies. As for decisions mentioned in (b) as set in Section 28(4) CCP, the new implementing legislation specifically states in Section 28(4) that such decisions may be challenged by a complaint.
Estonia	Refusal to provide translation of other essential documents (see (b) above) can be challenged by way of submitting a complaint (§ 10(9) of CCP). Failure to provide translation in a timely manner (see (a) above) does not carry an explicit possibility to submit a complaint, but when delay occurs during pre-trial proceedings, it is possible to submit a complaint to prosecutor under § 228 of CCP. In trial proceedings, there is no separate complaint procedure, and the only option is to include the violation of right to translation into an appeal against the judgement.
Finland	See previous answer; same applies.
France	Article D. 594-2 grants the right to challenge the absence or the lack of translation during the interrogation or hearing.
Germany	
Greece	Under Article 236A par.3 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, suspects or defendants have the right to exercise objections against the decision which held that the provision of translation of documents or passages of documents is not necessary or when the quality is not sufficient. Relatively, the same provisions as the ones referred to under question 1(d) apply.
Hungary	If the documents in (a) is not translated, that will be a fundamental breach of criminal procedure. Otherwise, there is no separate right to challenge a decision made in (b) and (c) above.
Ireland	The trial judge's decision in respect of the above will stand until the conclusion of the trial. If an appeal is necessary these issues can be raised at the appeal level also.
Italy	Only with the appeal against the decision of innocence.
Latvia	There is no separate decision regarding translation and accordingly no decision to challenge, but person can lodge a complaint if the translation or interpreter is unsatisfactory. If interpreter upon request is not invited, it is possible to file a complaint about such such refusal.

Lithuania	The refusal to translate the particular document could be appealed to the prosecutor of the higher rank and the pre-trial investigation judge during the pre-trial investigation stage. The court's decision not to provide the accused with the translation of the particular document cannot be appealed.
Luxembourg	Possibility to file an appeal
Malta	Challenges can be made orally, in writing or via Constitutional remedies.
Poland	There are no special provisions including instruments concerning the possibility to challenge translated decisions made in the criminal proceedings because of their translation. Mistakes and flaws of translation of mentioned decisions might be raised in a general mode of challenging decisions or on appeal against judgments. During the proceedings it's also possible to lodge a motion for another interpretation or translation (such motion is submitted to records of preparatory proceedings or to minutes of a court session).
Portugal	No information.
Romania	
Slovakia	According to Sec 28 para 5 CCP, if the body in charge of the proceeding does not accord the request of the accused, it decides by ruling with the possibility to challenge the ruling with complaint.
Slovenia	Challenges are possible in the form of a "notice" during the pending proceedings. The accused can challenge the decision in his appeal against a judgement as a breach of a criminal procedure under Article 371/8 of the Law on Criminal Procedure.
Spain	This decision may be challenged using the current remedies against judicial decisions. The problem is when this decision is taken by the police or by the public prosecutor, because in the Spanish system there is no possibility to challenge their decisions. The only way to do it would be an indirect way, through a habeas corpus motion.
Sweden	Decision made by the leader of investigation may be challenged by a request to a higher prosecutor. Court decisions may be challenged by an appeal to the higher court. A court decision can only be appealed in connection with the verdict or final decision of the court.
The Netherlands	See (b) above.
UK	**<u>England and Wales</u>** At a police station, if a detainee complains about the quality of interpretation or of translation, the custody officer "or (as the case may be)" the interviewer must decide whether a new interpreter should be called or a new translation provided (paras.13.10A, 13.10C of the Codes of Practice). At a court hearing or trial, if a defendant complains about the quality of interpretation s/he can make an application to the court. The court must give any direction that the court thinks appropriate, including a direction for a different interpreter.
	<u>Scotland</u> (a) The 2014 Regulations make provision for an accused person to seek a review of a decision taken by a police constable that he does not require translation of essential documents (reg 5), and to apply for a review of a determination made by a court that he does not require translation of essential documents (reg 11). (b) The defence can ask the court to consider providing a translated version of any document relevant to the case. It is for the court to decide whether any additional document is "essential" and therefore requires to be translated by either the Crown or the Court service. (c) The 2014 Regulations do not specifically provide for a means to challenge a decision (of a constable, or of a court) to translate only parts of essential documents; however it would be open to the defence to submit that the parts which were not translated were "essential" and ought to be translated (reg 10).
	<u>Northern Ireland</u> In practice I have never seen this refused. Court clearly would be concerned that defendant could make abuse application if court being told needs interpretation of documents to allow defendant to understand case and give instructions LAA have contract currently with FLEX interpreting services - refusal of funding would follow usual LAA appeal procedures, again never seen this happen in practice

(e)	*are there oral translations or oral summaries of essential documents? in what circumstances?*
Austria	In principle, any document may be translated orally or even summarised orally if the suspect has a legal counsel (§ 56(5) StPO). However, the suspect may still request the written translation of such parts of the documents that are necessary to understand the indictment. In practice, the possibility to replace the written translation by an oral translation is very problematic. I am aware of cases where documents have been translated orally for hours, so that the suspect had no possibility to understand or to remember every detail required for the defence.
Belgium	Yes, during or the interrogations or the court hearings if the suspect or accused is interrogated about or confronted with documents of the criminal files written in a language he does not understand.
Bulgaria	The transposing amendment to CPC provided for an opportunity to provide, as an exception to the general rules, oral translations or oral summaries of essential documents. In this respect, the national legal rule is an almost verbatim reproduction of the Directive provision. However, I have no information about cases where translations were in practice substituted by their oral equivalents.
Croatia	According to the Article 8, Paragraph 6 of the CPC, competenty body may instead of written translation, assure oral translation only if the suspect or accused person hired defence lawyer and if his procedural right on defence would not be violated with that decision. Also, according to the Article 8, Paragraph 8 of the CPC, interpretation of the communication between the suspect or accused person and his defence lawyer must be provided in all stages of procedure, if it is requested.
Cyprus	According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), the competent authority may provide, instead of a written translation, oral translation or/and oral summary of the essential documents, provided that the oral translation or/and the oral summary, does not prejudice the fairness of the proceedings. (Article 5(5))
Czech Republic	Oral translation of a document or its essential content, instead of a written translation, applies only to "other" documents mentioned under letter (b) as set in Section 28(4) CCP. Whether only oral translation will apply shall be decided by the competent law enforcement authority.
Estonia	According to § 10(7) of CCP, the text of a statement of charges and judgment shall be translated in writing [in full]. Other documents may be translated orally or an oral summary may be made thereof, unless this affects the fairness of the proceedings.
Finland	See previous answers. As told, at the interrogation stage oral translation is usually the only way documents are translated. During coercive measures proceedings in court, the same usually applies.
France	Article 803-5 provides that in exceptional cases an oral translation or an oral summary can be performed of essential decisions when such decisions have to be officially communicated or notified.
Germany	
Greece	Yes. Under Article 236A par.2 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, as an exception to the general rules, an oral translation or oral summary of essential documents may be provided instead of a written. In practice, oral translations are held by interpreters and only if the is a relative request regarding a specific document, at the stages he/she is present, i.e. before the investigator or before court.
Hungary	During investigation procedure all hearings and in the court procedure all trials are conducted by the application of an interpreter.
Ireland	This is by far the most prevalent practice and has the shortcomings previously identified. Not alone are defence lawyers reliant on the verbal translation, they do not have the facility typically of having their own correspondence and advices to their client translated in written form
Italy	During the trial for oral evidence
Latvia	Oral translations are provided to all documents that aren't decision depriving a person of his liberty, charges or indictments, or judgments. Oral summaries of essential documents are not provided.
Lithuania	The suspect is being provided with the oral translation of all case material when the pre-trial investigation is finished and the prosecutor is preparing the case to be sent to the court of first instance. The accused is being provided with the oral translations of the case material that was received additionally during the court hearings.

Luxembourg	There are oral translations, for example, during interrogations at the investigating judge's office.
Malta	Possible, such as when a document is presented during a witness testimony.
Poland	Generally oral translations or oral summaries of essential documents are possible within the criminal proceedings in Poland (there is no provision which would be an impediment for it), obviously – with respect to the right to a fair trial and the right to defence. Due to the Article 72 § 3 CCP, if the translated decision terminating the proceedings isn't challengeable, a proper authority – on approval of a suspect or an accused – is entitled to conclude with oral pronouncement of the decision. Also – in the light of the Article 204 § 2 CCP – there is no obstacle that an interpreter or a translator summoned by a proper authority will prepare an oral translation or an oral summary of a certain essential document for a suspect or an accused in order to create for them a possibility to acquaint with the evidence in criminal proceedings. In Poland such practice exists.
Portugal	No, only when the defence request.
Romania	
Slovakia	Sec 28 para 5 CCP instead of written translation it is permitted to interpret the document or its essential content without prejudice to the fairness of the proceeding. It is recorded in the Minutes of the proceeding whether complete document or its parts were translated.
Slovenia	Not provided by the law.
Spain	When a translator is not available in time, the judge may order the substitution of the translation by an oral reading
Sweden	There is no consistent practice in this regard. When the suspect is deprived of liberty, oral translation of the material of the investigation, i.e. the record of the preliminary investigation, is sometimes provided for by the investigative authority, sometimes by the lawyer. In other situations, oral translations and/or oral summaries of essential documents are normally provided to the suspect by the lawyer with the assistance of an interpreter.
The Netherlands	In the situation as mentioned in article 61 paragraph 8 NCCP an oral translation of that which has been put down in writing is sufficient. Also when the suspect has attended the orally given judgement, during which the decision was translated for him, the right to request a written translation has lapsed (article 365 paragraph 6 sub c). See the remarks under a.
UK	**England and Wales** The circumstances in which an oral translation of essential documents provided to a suspect detained at a police station and at the Crown Court is dealt with above.
	Scotland Yes. An oral translation of the terms of a warrant will be provided through use of an interpreter arranged by the police following apprehension to assist the accused person in police custody. Where an accused is released from police custody on an undertaking to appear at court, Police Scotland arrange for a translated version of the Undertaking Form, or relevant part thereof, to be provided to the accused prior to their appearance at Court. If an accused is to be released from court on bail, the court interpreter will provide an oral translation of the bail conditions to the accused. A written translation of the bail conditions will be provided to the accused as soon as is practicable.
	Northern Ireland Oral translation is normal procedure. All hearings in presence of defendant and interpreter unless court has been asked for and granted permission for defendant not to attend (by defence)

(f) whether the right to translation can be waived? under what circumstances? whether a waiver can be revoked?	
Austria	The suspect may waive the right to written translation after information about his rights (§ 56(6) StPO). The information about his rights and the waiver must be recorded in writing. If the suspect is in arrest or detention, any waiver can be given only in the presence of the defence lawyer. The waiver cannot be revoked, but the suspect may still request the translation of new documents.
Belgium	No waiver as such is foreseen, but art. 22 of the Belgian law of 15 June 1935 concerning the use of the languages in judicial matters stipulate that the suspect has to request the written translation of documents (see answer to question 2 above) at the latest within the 8 days after the judicial decision to send the file to the criminal court. The criminal court who will judge the case on the ground, may however decide to let translate documents even if the suspect omitted to ask their translation within the said delay.
Bulgaria	The right to translation can be waived. The organs of pre-trial investigation and the courts are bound by law to inform the accused person about her/his opportunity to waive the right to translation, if she/he so wishes. But this could be done only in the presence of the defendant's lawyer. Informing about the opportunity to waive the right to translation shall be done in writing and shall be signed by the accused person and her/his lawyer. There is no legal provision explicitly admitting or denying the possibility to revoke a waiver. In practice, revoking is always admitted.
Croatia	According to the Article 8, Paragraph 7 of CPC, suspect or accused person can waive on his right to translation only in form of written statement, after the competent body explained to him/her legal consuquences of taking it.
Cyprus	According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), the suspect, accused or fugitive has the right to resign from the written or/and oral translation or/and oral summary, provided by the Law, if the competent authority is satisfied that: (a) the person has previously consulted a lawyer or/and he/she has otherwise obtained full knowledge of the consequences of such a waiver, and (b) the waiver is unequivocal and given voluntarily. (Article 5(6)) Currently there is no provision in the legislation for a right to revoke the waiver. This is a problem and the law should be amended to include a clear right to revoke the waiver for whatever reason and at the time the suspect or the accused wants to exercise it.
Czech Republic	The waiver is possible both towards the obligatory documents enumerated in Section 28(2) CCP and "other" documents regulated in Section 28(4) CCP. The waiver triggers when the suspect or accused declares that he does not request the translation or oral translation. He has to be advised by a law enforcement authority before his declaration. The legislation does no regulate the right to revoke the waiver.
Estonia	Our regulations do not provide for the opportunity to waive the right to translation.
Finland	The right can be waived. In practice the suspect/defendant or counsel notifies about this to the authorities if no translation is required. Both according to the Criminal Investigation Act and the Criminal Procedure Act a translation may be left undone if the suspect/accused waives the right to a translation. No specific provisions exist in law under what kind of circumstances a waiver can be given, but the investigative authority and courts are required to give notice about the suspect's right to translation. Also in the Government Bill (HE 62/2013) it is referred to the Directive in this regard and stated that the waiver must be given voluntarily.

	The National Police Board has given an order on interpretation and translation in pre-trial investigation and coercive measures. In this order there are examples of phrases that can be used and included in the investigation report in cases of waiving the right to interpretation and translation. It is also emphasized that the waiver is completely voluntary. There are in principle no legal hindrances for revoking the waiver. In the National Police Board's order it is, however, suggested that the waiver regarding the right to translation of documents is "in principle" final, and in the model phrases referred to above it is stated that the suspect "voluntarily waives his/her right to translations in the current criminal proceedings in all its stages". This waiver does not affect the right to interpretation the current proceedings or to translations in possible other proceedings.
France	The right on translation can be waived due to article preliminary, but according to Justice internal memorandum of instructions such a waiver is valid only if the person as been legally advised before waiving this right. (Circulaire du 31 octobre 2013, page 5).
Germany	
Greece	Yes. Under Article 236A par.4 of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, any waiver of the right to translation of documents referred to in the present Article shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver. The waiver has to be unequivocal, without clauses or conditions, and given voluntarily.
Hungary	One may waive the right of interpretation and the right of translation. One may not revoke the waiver but may ask for an interpreter or translation.
Ireland	Translation is provided upon application. If an individual or his lawyer does not make an application, translation will not arise. Especially in less serious cases defence lawyers will wish to deal with the case through the English language on the basis that they will have a quicker and more expeditious hearing avoiding potentially a remand in custody while translation is arranged. Unfortunately this does lead to a situation where persons have no real understanding of the proceedings being brought against them or the reason for the outcome
Italy	There is no provision about waiver, unless the accused person states to understand the language.
Latvia	Right to translation can't be waived.
Lithuania	Lithuanian law does not foresee the possibility to waive the right to translation. The documents that are indicated in the law as subjected to compulsory translation should be translated and served to the suspect and the accused.
Luxembourg	The right may be waived, after information of the consequences of such waiver. And it must be possible to revoke a waiver as this one is never definitive.
Malta	Possible. This is minuted in proceedings. Waiver can be revoked.
Poland	In the light of provisions of the Polish Code of Criminal Proceedings concerning the right to translation (Article 72 and Article 204 CCP), such right cannot be waived. It's the vital element of the principle of the fair trial. So the presence and professional assistance of the translator is mandatory on the each stage of criminal proceedings (also during investigation) if the general prerequisite of such presence and assistance appears. It is worthy to note that a lawyer of a suspect or accused can communicate with a client directly (without the participation of a translator summoned by the authority) when the lawyer speaks the language of the client. However such lawyer isn't entitled to translate efficiently legal activities of proper authorities within the criminal proceedings substituting a separate figure of translator. A lawyer (defence counsel) cannot be treated as a translator in criminal proceedings in the light of the Article 204 § 3 CCP in relation with the Article 196 § 1 CCP and the Article 178 point 1 CCP.
Portugal	The right to translation can be waived only when the foreigner speaks and understands Portuguese but under no circumstances can be revoked.
Romania	
Slovakia	The accused may waive the right to translation. He/she must be informed on the possibility of a waiver, as well as on the possible consequences of the waiver. The accused may also request to have a document translated in a later stage of proceeding (and thus revoke the waiver).
Slovenia	The right to translation can be waived by the suspect of accused under the condition that the suspect or accused understands the language of the procedure and that he/she waives this right in written. It is unclear under the law whether this waiver can be revoked.

Spain	The right to translation can be waived by the suspect or accused if he/she was previously advised about this by a lawyer. The right to interpretation is not waivable.
Sweden	Within the Swedish legal system, there is no practice of waiving a right to translation.
The Netherlands	there is no provision laid down in the Code of Criminal Procedure about the way in which one can waive the right to an interpreter and translation. In practice, the right to assistance of an interpreter will soon be relinquished when the suspect himself states the he has sufficient knowledge of the Dutch language. In case it appears in court that the suspect has misjudged his own knowledge of the language, it can as yet be decided to call in an interpreter. In certain cases the statements made to the police have been taken in the Dutch language. So some assertiveness is required of the suspect to exercise the right to an interpreter.
UK	**England and Wales** A suspect detained in a police station may waive his right to a written translation of essential documents but only after receiving legal advice "or having full knowledge of the consequences and give their unconditional and fully informed consent in writing". Also, the suspect may be asked if they wish to waive their right to a written translation. They must be reminded of their right to legal advice and asked if they wish to speak to a solicitor. No police officer or police staff should do or say anything with the intention of persuading a suspect to waive their right to a written translation. There are no provisions for revoking a waiver in the Codes of Practice. That is not to say there is no remedy. If the suspect is charged with a criminal offence, and subsequently at trial there is an issue about the reliability of the waiver of the right to translation, then the judge may exclude any evidence obtained in the questioning of the suspect from the trial.
	Scotland Yes. An accused person can waive his right to be provided with a translation of essential documents. The waiver must be voluntary and unequivocal, and informed by legal advice (2014 Regulations, reg 15). The 2014 Regulations make no provision for the revocation of a waiver previously given, however in practice, standing an accused person's right to a fair trial and the court's overarching duty to ensure fairness, I would anticipate that a court would accept an express revocation of a waiver and instruct that essential documents be translated to assist the accused.
	Northern Ireland In practice never seen this. Presumably if defendant waived his right to interpret but lawyer would not be able to act if views conflicted re need for interpretation

Question 3 **What is the situation in your Member State – covering both national law and national practice - with respect to the quality of interpretation and translation regarding:** **(a) whether the quality is sufficient to safeguard the fairness of the proceedings?**	
Austria	If the prosecutor or the court appoints the interpreter, they have to appoint a person which is made available by the ministry of justice (Justizbetreuungsagentur) (§ 126(2a) StPO). The interpreter should be enrolled in the list of court interpreters (§ 126(2) StPO). The police has to appoint a person which is made available by the ministry of the interior (§ 126(2) StPO). The problem is that any other "suitable person" may be appointed if a person as mentioned above is not readily available. This happens very often at police interrogations. I am aware of cases where (i) a gas station attendant or (ii) somebody of the family of the victim or (iii) a firefighter or (iv) any other person somehow speaking the language of the suspect was called to interpret for the suspect. Often, the case is "closed" due to police interrogations so that the situation is not acceptable from the point of view of defence rights.
Belgium	Yes, in the most case, since they are sworn translators. If the quality would not be sufficient, the concerned authority may change for an other translator.
Bulgaria	Before the transposing amendment to CPC, it was generally agreed that the quality was not always sufficient to safeguard the fairness of proceedings. Because of the importance of the issue of quality, qualified interpreters and translators having experience in criminal matters participated in the discussions on the ways to transpose the requirements of the Directive. This helped a lot. Now we can say there is some progress but I, as well as some other lawyers, share the view that the transposing amendments to CPC are not fully adequate. After the amendment, CPC requires that interpretation and translation should only be "accurate" but accuracy does not always mean quality, especially in specific legal terminology. There are no normative criteria for qualification, experience, periodical attestations, etc., of the experts provided by the translation agency. Despite the fact that a specific Ordinance on the judicial translators and interpreters was adopted following the transposing amendments to CPC (Ordinance No. H-1/16 May 2014 of the Ministry of Justice), it still did not contain efficient provisions, which could guarantee the compliance with the requirements for quality of the interpretation/translation as set forth by the Directive. The Ordinance sets some vague principles for accuracy and completeness of the translation, a single requirement for Certificate of level of command C 1 or C 2 according to the Common European Language Frame and introduces no requirements for specific qualification in legal terminology, previous experience and periodical attestation. The Ordinance does not provide adequate procedures for control of the work of translators and interpreters, for assessment of their level of competence and for exclusion from the list of interpreters and translators in case of breach of the law and the duties of the expert.
Croatia	Mostly yes, but If the quality would not be sufficient, the concerned authority may change for other translator.
Cyprus	According to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), the interpretation and written or/and oral translation or/and oral summary shall be of a quality sufficient in order to safeguard the fairness of the proceedings, in particular by ensuring that the suspect, accused or fugitive have knowledge of the case against him/her and he/she and is able to exercise his/her right to defense. (Article 4(6)), (Article 5(7)) It is also worth noting that according to the Police Standing Order 5/48, the Police has a list with the names of interpreters, which has been approved by the Chief of Police. The registration of an interpreter on the list is only allowed after the approval of the Chief of Police. This is reviewed at the end of each year or whenever it is required. All members of the Police are obliged to use only this list, which is published on the intranet of Police (PORTAL) together with other relevant forms mentioned in Police

	Standing Order 5/48 (Police Order 5/48, paragraph 2 (1)). It is worth noting that the Police Standing Order is currently being amended. In the above mentioned list, interpreters for 37 different languages are registered and all members of the Police have access to it. In case that an interpreter for a particular language is not registered, the Police may apply either to the Press and Information Office of the Republic of Cyprus either to the Court in order to find an interpreter. The interpreters have to fulfill certain criteria in order to be registered on the list. These criteria include a certification that the interpreter does not have a criminal record and that he/she has a degree from a university that he/she has very good knowledge of the language that you want to interpret. From my experience we never had an issue with the quality of the interpretation.
Czech Republic	The interpretation is in principle secured only by interpreters registered in the register of experts and interpreters who have to fulfil set conditions to be registered (the interpreters who are not registered may be used only under special circumstances). However, see below comments to these conditions. The standard of the interpretation is generally at a relatively good level. The deficiencies lie in particularly in insufficient knowledge of the specialized legal terminology or criminal slang. Yet it is difficult to determine that e.g. some legal terms were misinterpreted, if you are not familiar with the language that the interpreter is using.
Estonia	It is possible that two types of interpreters/translators take part in the proceedings -- sworn translators and other translators. Sworn translator is a regulated profession covered by Sworn Translators Act, and such translators are subject to specific requirements, incl education, examination, registration, evaluation (once every 3 years), etc. Other translators are simply defined as persons who are proficient in language for specific purposes or a person interpreting for a deaf or dumb person (§ 161(2) of CCP). Such translators are not subject to any specific quality control measures, except those which may be applied by his/her employer on non-statutory basis. There is no requirement in CCP to use sworn translators whenever possible, i.e. the police, prosecutor, or judge can always use other translators. In practice, sworn translators are not used very often, and the quality of interpretation provided by other translators varies a lot.
Finland	The provisions in law only state: “A person who has the skills required for the task, is honest and is otherwise suitable for the task may serve as interpreter.” It is also possible for the suspect/defendant to ask that the interpreter be changed, if the quality of the interpretation is not good enough – this is stated in the Government Bill but not in a provision of law. However, it is stated in law that the investigative authority and especially at the court stage the court must ensure that the quality is sufficient and that another interpreter be assigned if needed to safeguard the legal protection of the party. This is, however, done on a case-by-case basis and especially when more unusual languages are interpreted it may be impossible for the authorities to ensure the quality. In such cases it is up to the suspect/defendnat and his/her counsel to try to react if the quality is not sufficient. Change of interpreter is in the discretion of the authorities.
France	Pursuant to article 594-11, Interpreters are either appointed on a specific list made available by the ministry of justice (national list of judiciary experts), or as to take oath the serve justice during his or her translation s long as the interpreter is not a police member, a judge, a party or a witness.
Germany	
Greece	In practice, the Greek Police puts a great effort in order to safeguard the quality of translation and interpretation. The quality is sufficient in any case regarding the “well known” languages (e.g. English, French and Russian). Sufficient quality also exists regarding the Pakistani and Afghan languages due

	to the large number of immigrants from these countries. Problems are presented as to some "not so known" languages in Greece, such as the African.
Hungary	Usually quality is sufficient to safeguard fairness of the proceedings, but interpreters usually have problem with legal terminology, since they are mainly interpreters but not legal expert interpreters.
Ireland	There are real concerns about the quality of the translation services. The police select the translators for Garda stations. It is economically driven. It is done as a national contract with no input from defence lawyers with regard to quality for instance. The defence do not have the right to bring a private translator publicly funded to a police station. The situation would be different if the client could afford a translator themselves. Translators routinely volunteer their services for languages which they are not expert in. A Russian speaker might for instance indicate that they could satisfactorily translate for Lithuanians, Latvians and Estonians.
Italy	None
Latvia	Yes.
Lithuania	The quality of interpretation and translation is quite a complicated matter in Lithuania because, firstly, there is no prevailing opinion that a direct connection between the quality of translation/interpretation and the fairness of the proceedings do exist; secondly, there are no safeguards in the law to guarantee the quality of translation/interpretation. In practise, it happens that translations/interpretations are being provided by persons who do not have the appropriate education to render such kind of services, despite the fact that they are working at translation bureau. Consequently, the quality of translation/interpretation is not sufficient, especially when the matter concerns translation/interpretation from/to the language that is not usually spoken foreign language (e.g. English, French, German, Russian, etc.)
Luxembourg	This depends on the quality of the translator
Malta	No information
Poland	In the Polish Code of Criminal Proceedings of 1997 there is no provision directly addressed to the issue of quality of the interpretation or translation. The general standard concerning the right to defence and the right to a fair trial demands that the quality of translation should be at level ensuring the fulfillment of the aforementioned standard. In practice there appear opinions that sometimes the standard of interpretations or translations isn't high and a quality of such interpretations or interpretations could be dangerous in some situations to the sufficient fulfillment of the right to defence and the right to a fair trial. It's worthy to add that according to the research report devoted to the quality of the interpretation and translation in criminal proceedings, prepared in December, 2011 by Anna Mendel from the National School of Judiciary and Public Prosecution in Poland, the quality of interpretation and translation into Polish in criminal proceedings in opinions of representatives of Polish criminal justice administration was estimated as good by 61% of answerers, as very good by 22% of answerers, as satisfactory by 14% of answerers an as weak by 3% of answerers. In turn, the quality of interpretation and translation into foreign language in criminal proceedings in opinions of aforementioned persons was estimated as good by 40% of answerers, as very good by 16% of answerers, as satisfactory by 31% and as weak by 3% (see: A. Mendel, Raport z badania ankietowego na temat jakości tłumaczenia w postępowaniu karnym, 2011, http://www.tepis.org.pl/pdf-doc/home//r-jtpk.pdf, pp. 15 - 16). In opinions of interpreters, the quality of interpretations in criminal proceedings was estimated as very good by 38% of answerers to the research questionnaire, as good by 45% of such answerers and as satisfactory by 13% of answerers. 4% answerers claimed that it's quite difficult to estimate the quality of interpretation (see: A. Mendel, op. cit., p. 27).
Portugal	In general the quality of interpretation and translation is sufficient to safeguard the fairness of proceedings; if this is not the case, in which concerns national practice I'm keen to believe it is very difficult a claim presented can be considered.
Romania	
Slovakia	Quality is in principle sufficient.
Slovenia	The quality of the interpretation is generally sufficient to safeguard the fairness of the proceedings.
Spain	No. This is the main problem. The quality, generally speaking, is very poor.
Sweden	The directive has led to amendments on the quality of interpretation during the criminal process. According to the new rules, the investigative authorities and the court shall, at all stages of the proceedings, preferably assign an authorized interpreter to assist in the matter.

	Authorization is awarded by the Swedish Legal, Financial and Administrative Services Agency - Kammarkollegiet. When awarded authorization the interpreter can seek for specialist qualification as a court interpreter. A main concern regarding the quality of interpretation is the access to qualified interpreters and translators. Access varies depending on the language needed and where in Sweden the proceedings are carried out. At present, there is a shortage of authorized interpreters/translators and authorization has been awarded only in a limited number of languages.
The Netherlands	In general one can say that the quality of the interpreters is adequate, although in some cases the work is not up to the mark.
UK	**<u>England and Wales</u>** There have been serious concerns about the quality of interpretation services in England and Wales since the Ministry of Justice signed a four-year Framework Agreement for the provision of interpreting and translating services to the Courts and Tribunals Service with Applied Language Solutions (ALS) (now Capita Translating and Interpreting) in August 2011 ('the National Agreement', supra). In 2013, the House of Commons Justice Committee found that "from 30th January 2012 when ALS subsequently began delivering interpreting and translation services to HM Courts and Tribunals Service it faced immediate operational difficulties. ALS and more recently Capita have been unable to recruit qualified and experienced interpreters in sufficient numbers, leading to an inadequate volume and quality of interpreting services being available to courts and tribunals. This has resulted in numerous hearings being adjourned or severely delayed and, in criminal cases, unnecessary remands into custody, with potential implications for the interests of justice". The National Agreement states that the minimum standard required of an interpreter at court or at the police station is to have completed the relevant qualification (Diploma in Police interpreting for police station work and Diploma in Public Service Interpreting for Court work) and to have been registered on either an interim or full basis upon the National Register of Public Service Interpreters. Interim status requires a relevant qualification and the DPI or DPSI, full status requires a minimum 400 hours of public service interpreting. In the case of rare languages the National Agreement recognises that there might not be interpreters who meet the minimum standards. In such circumstances interpreters can be used who are not qualified or registered but who have proven academic qualifications or relevant experience. Such interpreters should not be used for the "broad range of evidential purposes" Anecdotal evidence from magistrates and higher courts suggests that the situation has improved since the introduction of the Framework Agreement, but there remain real difficulties in ensuring the supply of properly qualified, and on occasion, even competent interpretation services from Capita. These problems are particularly acute in metropolitan areas, where there is a high demand for services, and defendants and witnesses often do not speak English as their mother tongue. Whilst the provision of interpretation services for foreign languages commonly spoken in metropolitan areas (for example, Polish, Lithuanian, Arabic, Urdu, Punjabi) is generally good, the standard of less common languages (Farsi, Kinyarwandan) is patchy, and often found wanting. In 2015 a universal jurisdiction trial of a Nepalese Colonel accused of torture during the 2005 Civil War was halted after concerns were raised about the quality of interpretation. It transpired that contrary to the national agreement none of the interpreters supplied were qualified. A re-trial was listed but this too was abandoned as no competent interpreter could be found. The trial judge is currently considering whether to stay the trial as an abuse of process. This outcome is not unusual. In R v Foronda [2014] NICA 17 the Court of Criminal Appeal had the following to say about the provision of interpretation services by Capita (per Coghlin LJ):

	"Interpreters must be suitably qualified and expert for, otherwise, there would be a real possibility of inaccuracy creeping into the translation of questions and answers which, in turn, might lead to a jury hearing an answer which neither reflected the actual question nor the actual answer. An interpreter should be suitably qualified and aware of his/her responsibilities to ensure accuracy and objectivity in the provision of interpretation services. Accordingly, if a witness does not understand a question and requires assistance in relation to translation of that question the interpreter must provide that translation openly and clearly. The court recording will record what is said so that, if at a later stage a question arises as to whether a mistake has arisen in the translation of the question and/or the answer, it will be on the record and can be the subject of subsequent investigation…[16] Article 6 also requires the provision of the "free assistance of an interpreter" if a suspect cannot understand or speak the language used in the relevant court. In February 2010 the Court Service issued a consultation paper on the Provision of In-Court Interpretation Services in the course of which the Court Service confirmed that it requires interpreters in more complex cases who are registered with NRPSI and possess a DPSI diploma….. [17] the judiciary require an interpreter in a Crown Court trial to be registered with NRPSI and that such a requirement should be set out on the booking form under 'Additional Information.' That appears to have been totally ineffective in this case. We have been shown the booking form which did not include any such requirement and no effective cross-check or supervision appears to have been carried out".
	Scotland COPFS is one of the main users of the Scottish Government's collaborative framework agreement for the provision of interpretation, translation and transcription services. As part of the tender process for this contract, tenderers had to provide details of how they would ensure a consistency in the level of services delivered and provide training opportunities and support to achieve relevant qualifications in order to increase the pool of suitably qualified interpreters in Scotland. In addition, the weighting attributed to quality far outweighs that given to price. The Working Group on Interpreting and Translating (WGIT) also organises practical training events for interpreters and prosecution staff in order to promote best practice in court room settings to support victims, witnesses and accused persons who have a language need.
	Northern Ireland Yes

(b)	*concrete measures taken to ensure quality?*
Austria	The interpreters enlisted as court interpreters have to pass an exam. Apart from that, there are no measures to ensure quality.
Belgium	The Belgian law of 15 June 1935 concerning the use of the languages in judicial matters requires sworn translators, which ensures normally quality.
Bulgaria	As regards the measures taken and their assessment see the previous answer.
Croatia	The interpreters enlisted as court interpreters have to pass an exam at the competent body.
Cyprus	As mentioned in my answer to Question 3(a) according to the Police Standing Order 5/48, the Police has a list with the names of interpreters, which has been approved by the Chief of Police. The registration of an interpreter on the list is only allowed after the approval of the Chief of Police. This is reviewed at the end of each year or whenever it is required. All members of the Police are obliged to use only this list, which is published on the intranet of Police (PORTAL) together with other relevant forms mentioned in Police Standing Order 5/48 (Police Order 5/48, paragraph 2 (1)). It is worth noting that the Police Standing Order is currently being amended. In the above mentioned list, interpreters for 37 different languages are registered and all members of the Police have access to it. In case that an interpreter for a particular language is not registered, the Police may apply either to the Press and Information Office of the Republic of Cyprus either to the Court in order to find an interpreter. The interpreters have to fulfill certain criteria in order to be registered on the list. These criteria include a certification that the interpreter does not have a criminal record and that he/she has a degree from a college that he/she has very good knowledge of the language that you want to interpret. In my opinion to comply with the provisions of Article 5 of the Directive our legislation should be amended and provide for an official list drafted by the Supreme Court with the names of the interpreters and their qualifications so that the suspect or the accused and his/her lawyer can evaluate the credentials of the interpreters and the quality of their work. This will safeguard the independence of the interpreter's selection process
Czech Republic	Only interpreters who fulfil set prerequisites may be registered in the register of experts and interpreters. However, there are only very vague criteria for being listed in this register - according to Article 4(1)(e) of Act No. 37/1967 Coll., on experts and interpreters to be appointed as an interpreter you have to be a person with knowledge and experience in the relevant language, especially someone who completed special education for interpreting. Thus there is no minimum standard of practice, education or obligation to pass specific test or examination; once registered, there are no checks whether the quality of an interpreter still suffice. The Act on experts and interpreters contains a list of sanctions which seems, from the practical point of view, rather formal and not sufficiently diversified - interpreters may be dismissed from the register, pay fine, receive a warning. The Criminal Code also contains a criminal offence of false interpretation.
Estonia	In criminal proceedings, there are basically only three concrete measures aimed at ensuring quality: a) the obligation of the interpreter to refuse to take part in the proceedings in case he/she is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person (§ 161(6) of CCP); b) the right of the body conducting the proceedings to remove the interpreter if the interpreter does not perform his or her duties as required or if the quality of the interpretation or translation may impair the exercise of the right of defence of the suspect or accused (§ 162(21) of CCP); c) the right of the suspect/accused or his/her counsel to complain against the provision of false interpretation/translation (§ 161(7) of CCP).
Finland	The Board of Education has in 2013 given an order on special vocational examination for legal interpretation. At least one program for legal interpretation is on going and we have knowledge of another program in which, if funding is received, the first course may begin in 2016. No other specific measures have been taken. There are no authorized interpreters in Finland. Authorized translators do exist. Even though the authorities are encouraged to use professional interpreters, the decision on whom to use as an interpreter is done on a case-by-case basis also bearing in mind that at the Ministry

	of Justice has tendered the interpreters used at least in the largest courts in Finland. Especially in more unusual languages the quality may vary a lot.
France	Expect the keeping of the lists none.
Germany	
Greece	In practice, concrete measures are not taken. The competent audit authorities try as hard as possible, given the caseload, in order to safeguard the fairness of the proceedings and to ensure that the defendants are able to exercise all their rights.
Hungary	No information.
Ireland	If the defence were able to select translators themselves they would choose on the basis of quality given that the cost would be discharged by the Government in any event. This would promote an excellence in service delivery as it would be independent of economic motivation. Many firms of translators advertise their services and where the Court (in a post custody situation) certifies for the provision of a translator it is open to the defence at that stage to select their own. This leads to a more satisfactory situation. However Court certificates tend to cover a consultation rather than the translation of the documents. A special application is needed in that regard.
Italy	None
Latvia	The official who invites an interpreter shall inform him or her regarding the rights and duties of an interpreter, as well as the liability regarding false translation or a refusal to translate.
Lithuania	No information.
Luxembourg	No information
Malta	No information
Poland	Because of the reasons having the impact on the quality of interpretations or translations, there were made in Poland some recommendations like: - to raise the current wages of sworn interpreters and translators (nowadays, too low wages limit the accessibility to professional sworn interpreters or translators; too low wages causes that professional interpreters or translators aren't interested to become sworn interpreters or translators); - improving relations, cooperation and communication of interpreters or translators with other figures of criminal proceedings – not only with representatives of investigation or criminal justice administration but also with witnesses, victims and suspects/accused (the figures of criminal proceedings shall understand better the specificity of interpreters' or translators' work); - to provide for interpreters and translators by investigation or criminal justice officials basic information concerning the concrete criminal case before the beginning of the interpretation or translation; - one of the most important elements to improve a quality of interpretation in criminal proceedings is sought in the earlier possibility of reading by an interpreter files of a criminal case before the interpretation or even in earlier contact with the persons whose testimonies, explanations or opinions will be interpreted in criminal proceedings - to improve technical conditions of the interpretation or translation service during criminal proceedings (like, for instance, the acoustic of court chambers); - to record activities of criminal proceedings (like, for instance, hearing of witnesses or examinations of suspects or accused) – it could ensure the impartial control and evaluation of the quality of interpretation or translation by analysis of the recorded material; - observations of the work of interpreters or translators (such observations should be made by officials of investigation and criminal justice bodies); - providing of trainings for interpreters and translators concerning various aspects of Polish criminal law and Polish criminal proceedings as well as their specificities (terminology, principles, institutions and so on); - providing of trainings for interpreters and translators in the field of professional foreign language (including legal, economic and technical aspects of specialization). In particular, there is a need to provide trainings in the field of rare foreign languages (like, among others, Chinese, Vietnamese, Kurdish); - providing of trainings for investigation and criminal justice officials to improve their foreign language skills and competences;

	- in the context of professional trainings addressed to interpreters, translators or investigation or criminal justice practitioners – it's necessary to develop offers of specialistic trainings in the field of domestic and foreign substantive criminal law and criminal proceedings or in the field of interpretation and translation techniques for purposes of investigation and criminal justice administration as well as cooperation with officials of the mentioned administration. Such trainings could be offered also in a form of e-learning programmes and financed or co-financed from public sources; - to introduce a difference between interpreters and translators. (It's remarkable that in the whole Polish legal system there is no formal terminological distinction between interpretation and translation and between interpreters and translators in the context of criminal proceedings or other legal proceedings). According to provisions on the Act of the 25th of November, 2004 on the profession of a sworn translator (consolidated text - Journal of Laws 2015, item 487 with subsequent amendment) there is no formal classification on interpreters and translators and every person who pretend to become a sworn translator shall pass the state exam containing two parts – translation and interpretation (Article 4 section 1). A sworn translator is principally obliged to prepare interpretations or translations in legal proceedings on demand of a court, a prosecutor, a police or bodies of public administration (Article 15); - introduction of a requirement to inform about the specialization of interpreters (translators) on the official list of sworn translators; - to improve a technical quality of documents and other writings in criminal proceedings which should be interpreted or translated (unfortunately, in Poland there exists an opinion basing on experiences of interpreters and translators that many documents handed over to interpretation or translation service are illegible or sloppy). Sometimes the given material should be interpreted or translated not by a single interpreter or translator but rather for a group of such persons (two or even more interpreters or translators); - to update personal and contact data of persons listed as sworn translators (such data are very important especially in case of the necessity of prompt and urgent interpretation or translation in criminal proceedings); - to establish a body of experts by the Ministry of Justice in order to prepare a glossary including recommendations concerning interpretations and translations of the names of institutions, titles of the most characteristic legislation and legal concepts in the most frequent foreign languages appearing in the context of criminal proceedings (in Poland, the problem of the application of a heterogeneous legal terminology is identified). Such glossary should be commonly available at the webpage of the Ministry of Justice and webpages of associations of interpreters and translators; - developing of knowledge of interpreters and translators about the ethics principles of their profession. Some of these recommendations are still vivid. Particular postulates included in the aforementioned recommendations sometimes have their practical "incarnation". For instance, the list of sworn translators is transparently available at the webpage of the Ministry of Justice and proper personal and contact data of sworn translators are updated. However, there is still a lack of the precise information about detailed specialization of sworn translators (there's only information about the language/languages of such translators and there is no information about the areas of their specialization, like for example criminal law, civil law, medical law, commercial law and so on). Interpreters and translators participate in trainings developing their language skills and competencies. Unfortunately, there appear practical situations when interpreters or translators receive from proper authorities documents or other writings in criminal proceedings of a poor technical quality and they have a very short deadline to prepare an interpretation or translation. It's worthy to remark that in Poland there is deficit of professional trainings addressed to interpreters and translators organized by public subjects (state bodies). Some initiatives in this matter are offered by universities and private subjects (like Association of Polish Translators).
Portugal	No information about the concrete measures, but we think that the quality is ensure.
Romania	
Slovakia	Quality is presumed if the assigned interpreter/translator is registered on the official list of interpreters and translators managed by the Ministry of Justice. The Ministry is equally competent to review the complaints relate to the interpreter in question. According to the case law (eg Supreme Court file no. 6 To 32/97), if the proceeding in pre-trial stage was interpreted by a person who is not on the list of

	interpreters, it is not to be considered a serious defect of the pre-trial stage. Different situation would arise should the person not have adequate qualification or omitted to take an oath.
Slovenia	The interpretation is provided by the official translators that have passed the proper exams at the Ministry of Justice and are registered by the Ministry of Justice.
Spain	None.
Sweden	See the answer under (a) above.
The Netherlands	The criminal justice system is legally obliged to only use sworn interpreters and translators (article 28 of the Sworn Court Interpreters and Translators Act. Only in exceptional circumstances, for instance when there are no sworn interpreters of a rare tribal language, one can depart from this Act. The criteria they have comply with are laid down by law in the "Decree sworn interpreters and translators". It broadly comes down to the fact one has to have received a training to become an interpreter or a translator at bachelor level.
UK	**<u>England and Wales</u>** The measures taken to ensure quality are a matter for the Ministry of Justice which conducts a vetting exercise of interpreters and translators provided by Capita under the National Agreement referred to above. There are serious concerns about the quality of interpreters and translators provided by Capita shared by legal professionals and the judiciary in England and Wales. As set out above all interpreters should meet the minimum standard save in the case of rare languages.
	<u>Scotland</u> The Scottish Government's collaborative framework agreement for the provision of interpretation, translation and transcription services includes specific criteria which must be met before an interpreter will be considered suitable for working in the criminal justice system. This includes minimum standards of qualifications or equivalent and court work experience. The gold standard is the Diploma in Public Service Interpreting. However, use is made of interpreters who have not achieved this level of qualification, particularly in situations where the language/dialect is uncommon and/or there is an urgency to the situation.
	<u>Northern Ireland</u> Yes. In practice FLEX interpreting devices have LAA contract. Competitive tender process re same

(c) access by lawyers to registers of independent translators and interpreters which have been established (if any)?	
Austria	A list is available online (www.sdgliste.gv.at).
Belgium	No.
Bulgaria	Ordinance No. H-1/16 May 2014 of the Ministry of Justice (see above) rules that every regional court in my country is to register a list of independent judicial interpreters/translators. The Supreme Court of Cassation may register a list of its own. Everybody (not only lawyers) may have access to these lists because they are made public by a respective announcement in "State Gazette". There are 28 regional courts in Bulgaria. Only 13 regional courts have published their lists so far. The National Investigation Agency and the Supreme Prosecutor's Office of Cassation have published lists of their own. The conclusion is that the lists of 15 regional courts are still missing and therefore are inaccessible. The Supreme Court of Cassation has not yet published its list either.
Croatia	A list is available online (http://www.sudacka-mreza.hr/tumaci.aspx).
Cyprus	As mentioned in the above paragraph the list of interpreters is published on the intranet of the Police (PORTAL) but it should be noted that there is no access by Lawyers. In my opinion to comply with the provisions of Article 5 of the Directive our legislation should be amended and provide for an official list drafted by the Ministry of Justice and Public Order with the names of the interpreters and their qualifications so that the suspect or the accused and his/her lawyer can evaluate the credentials of the interpreters.
Czech Republic	The Czech Republic has a register of interpreters, which is publicly available on the website of the Ministry of Justice, the access is free of charge. The interpreters may be searched according to language or regions.
Estonia	The list and contact details of sworn translators is available to everybody on the website of the Ministry of Justice.
Finland	There are no specific registers by authorities, but for example The Finnish Association of Translators and Interpreters has a search engine on its website which is open and can be used by lawyers also.
France	Only before police interrogations, judges auditions and hearings.
Germany	
Greece	In practice, the names of independent translators and interpreters are published every year in the Government Gazette. Access to lawyers is permitted but a register is not established.
Hungary	No special official database is available.
Ireland	
Italy	No, not a specific register for interpreters and translators in judicial proceedings
Latvia	There is no such registers.
Lithuania	The registers are not established in Lithuania till now.
Luxembourg	Yes
Malta	Available (justiceservices.gov.mt>Court Experts)
Poland	In Poland there exists an official register of sworn translators available at the webpage of the Ministry of Justice (http://bip.ms.gov.pl/pl/rejestry-i-ewidencje/tlumacze-przysiegli/). There is no problem with the access by lawyers to such register. Other persons (e.g. native speakers of a foreign language who live in Poland for a long time and also speak Polish language very well) who can be summoned by investigation or criminal justice authorities to fulfill a role of an interpreter or a translator in a criminal proceedings (so-called ad hoc interpreters or ad hoc translators) aren't listed in separate official registers. (Such persons are summoned by a competent body if there an urgent need of criminal proceedings has appeared and the competent body knows that a summoned person has necessary language skills, proper to fulfill tasks of interpretation or translation).
Portugal	There is not any official register of independent translators and interpreters.

Romania	
Slovakia	Yes, register of independent translators and interpreters is established and accessible, appropriate qualification is verified by the Ministry of Justice in cooperation with the Institute of translation and interpreting.
Slovenia	Yes. The access to registers of independent translators and interpreters is provided.
Spain	The law which implements the directive envisages the creation of an official register of interpreters and translators, but this has not yet been put into practise. This official register does not currently exist.
Sweden	The Swedish Legal, Financial and Administrative Services Agency has established a national public register of authorized translators/interpreters and translators/interpreters approved by the authority. The register is made available to public on the website. The register includes only the interpreters and translators who have permitted publication of their details.
The Netherlands	There is a Bureau Sworn Court Interpreters and Translators Act in the Netherlands. This bureau updates the register on that subject. Actors in the criminal justice system are obliged to engage only registered interpreters and translators. As far as lawyers are concerned, in case they applied for government-funded legal aid, they are also obliged to engage registered interpreters and translators. The register can be consulted via the internet, http://www.bureaubtv.nl
UK	**England and Wales** At most court centres, there is a list of independent translators, but the upkeep of the list is very much a matter for the staff at the court. The National Register of Public Service Interpreters has a searchable database of all its members http://www.nrpsi.org.uk/. The Chartered Institute of Linguistics (which runs the DPI and DPSI courses) also has a searchable database of fellows and members of the CIOL who will generally be qualified at a higher level.
	Scotland There is no independent register of translators or interpreters in Scotland, however the Scottish Legal Aid Board maintains a register of interpreters, with the caveat that "inclusion on the Register does not imply endorsement by SLAB".
	Northern Ireland Publicly funded work must use FLEX interpreting firm- they hold current contract with LAA Privately funded can also use NICEM registered interpreters who maintain a register- NICEM were previously providing publicly funded interpreters

Question 4 **What is the situation in your Member State – covering both national law and national practice - with respect to record keeping regarding:** **(a) questioning or hearings with the assistance of an interpreter?**	
Austria	The name and details of the interpreter are recorded in the written protocol.
Belgium	The Belgian code of criminal procedure requires that the statement of interrogation mentions expressively all the circumstances of and participants to the interrogation. So, any intervention of a translator during the interrogation will be recorded in the statement as well as his/her identity and capacity of sworn translator and also which documents he/she has translated if any.
Bulgaria	The national law requires that the occurrence of questioning and hearings with the assistance of an interpreter shall be noted in accordance with the recording procedure in Bulgaria. In practice this is always done without any exceptions whatsoever.
Croatia	According to Article 273 of CPC, suspect or accused person are entitled on interpreter during questioning and hearing. In a doubt if the suspect or accused person understand domestic language, the competenet body will assure participation of the interpreter.
Cyprus	According to Article 8 (a) of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), (a) when a suspect or accused person has been subjected to questioning or/and hearing by an investigative or/and judicial authority with the assistance of an interpreter or/and the competent authority records the event in the relevant file or/and the minutes of the procedure.
Czech Republic	The record is drafted in the Czech language, even though the person speaks in a different language; if the verbatim version matters, the relevant part is recorded in the language that the person is using (see Section 55(4) CCP).
Estonia	The fact that an interpreter participated in a procedural act must be stated in the report of that act (§ 146(2)p6 of CCP) or minutes of court hearing (§ 155(2)p3 of CCP).
Finland	There is a Government Decree on Criminal Investigation, Coercive Measures and Secret Obtaining of Information (122/2014), in which it is stated that the question of the language used and if interpretation has been used needs to be written down in the pre-trial investigation report. A provision of this also exist in the Criminal Investigation Act and the Criminal Procedure Act regarding court proceedings.
France	The name and the quality of the interpreter is written down in the all the minutes of the proceedings acts.
Germany	
Greece	Under Article 238A of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, when a suspected or accused person has been subject to questioning with the assistance of an interpreter, a report is written or a reference is made in the report written by the competent each time authority. There is always a note that the testimony or the apology of the accused was made with the assistance of an interpreter, and his name. Archives are not kept except the references mentioned.
Hungary	All questionings or hearings are made with the assistance of an interpreter.
Ireland	All questioning in police custody and all Court hearings are recorded. Police custody is recorded audio visually and Court hearings are recorded on digital audio tape. However in the Court setting what is recorded is the comments of the lawyers, witnesses and judge. The discussion between the translator and the accused is not recorded and there is no evidence as to the quality of translation. The translator is only recorded in the Court proceedings when a witness in that language is being examined and the translator has to translate the question from English to the witness' language and vice versa with the replies.

	In the police station consultations between lawyer. client and translator are not recorded for obvious reasons. Hence there is also no guarantee of quality or record of it.
Italy	Yes, it is recorded if the audio-recording procedure is provided for the single hearing without the interpreter
Latvia	Interpreter is informed about the rights and duties of an interpreter, as well as the liability regarding false translation or a refusal to translate. Interpreter confirms his or her awareness with a signature in a separate document or in protocol.
Lithuania	The Lithuanian law does not foresee the obligation for the authorities to record the questioning of the suspect when he/she is being questioned with the assistance of an interpreter. It is the choice of the pre-trial investigation officer or the prosecutor to make records of the questioning or not. Besides, not every police station or/and prosecutor is equipped with the special recording devices. The records are obligatory to be made during the court hearings and the questioning of the accused is being recorded whether he/she is being questioned with the assistance of an interpreter or not.
Luxembourg	No record keeping, this is one of the most important improvements to undertake in Luxemburgish procedure
Malta	Minuted in proceedings
Poland	In Poland, according to the Article 72 § 2 CCP, if a suspected or an accused person is a subject to questionings or hearings by an investigative or judicial authority and he or she doesn't speak Polish, the assistance of interpreter is mandatory and it's indicated in minutes of these proceedings activities. So, the assistance of an interpreter is indicated in records of criminal proceedings. According to provisions of the Article 147 CCP such assistance (but not expressis verbis) could be also recorded by using devices recording picture and sound. Such recording is prepared beside (not instead) of minutes of questioning or hearing and it is attached to the minutes. If an accused is not in the venue of a trial, an interpreter or a translator shall participate in judicial activities performing with using of technical devices enabling distant performance of such activities. An interpreter or a translator shall be present in the venue of the stay of an accused (Article 517b § 2d CCP). I have no concrete data concerning practice in these fields.
Portugal	In these cases, it is registered in the judicial process that there was intervention of a translator.
Romania	
Slovakia	Every act in the course of criminal proceeding must be recorded in the Minutes, either while the act is being performed or directly afterwards. Minutes include information on all persons present (name, address, position). If the act is performed in the presence of interpreter, he/she signs the Minutes of the proceeding. According to Sec. 58 par. 3 CCP the report on the statement of a person who does not speak Slovak shall be drawn up in Slovak.
Slovenia	Minutes of the questioning/hearing of the suspect shall record whether the questioning/hearing was conducted with the assistance of an interpreter.
Spain	Every procedural act is recorded, by writing or by video.
Sweden	According to law and practice it is noted in the record when a suspect or accused person has been assisted by an interpreter during an interrogation or a hearing.
The Netherlands	In case of an interrogation situation, the suspect who has no (thorough) command of the Dutch language, is allowed to request the assistance of an interpreter under the terms of article 29a NCCP. In case an interpreter is engaged, this will be included in the official report, stating the personal particulars of the interpreter in question and, as and when necessary, his registration number
UK	**<u>England and Wales</u>** In the police station, a note or record of the use of an interpreter is recorded in a computer generated document called a 'Custody Record'. A custody record is created for all persons detained and questioned in a police station whether or not they are arrested. The custody record is stored electronically. The relevant entries on the custody record are made by the custody officer. The custody record of a person detained or questioned at a police station is disclosed (subject to a relevance test) to a defendant at trial. The use of an interpreter at trial is recorded on the court record, which is kept with the court. Records of the use of interpreters in police stations are kept by the relevant constabulary for accounting purposes. Records for accounting purposes of the use of interpreters at hearings are kept by the Courts

	and Tribunal Service, which is a division of the Ministry of Justice. The records are at present, not publicly available.
	Scotland Reg 14 of the 2014 Regulations provides that the clerk of court must make a record of the fact that interpretation assistance is provided.
	Northern Ireland Police station PACE order. All interviews oral recording, copy of recording provided to defendant Magistrates court written note of outcome of hearing kept by court staff and magistrate Crown court oral recording of all proceedings

(b)	*oral translation or oral summary of essential documents?*
Austria	There is no provision that the oral translation of oral summary must be recorded. In general, there is no such recording, neither in writing nor by audio or video tape.
Belgium	(see above the general answer to question 4)
Bulgaria	The national law requires that the occurrence of oral translation or oral summary of essential documents shall be noted in accordance with the recording procedure in Bulgaria. As I stated above however, since there is no information about cases where translations were in practice substituted by their oral equivalents, I am not able to report how recording of oral translation or oral summary of essential documents is practically made in Bulgaria.
Croatia	See above under b)
Cyprus	According to Article 8 (c) of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), (c) when an oral translation or/and oral summary of essential documents has been provided or/and the competent authority records the event in the relevant file or/and the minutes of the procedure
Czech Republic	The use of oral translated shall be recorded.
Estonia	Providing an oral translation or summary is a procedural act within the meaning of CCP, and a report on that must be prepared under § 146 of CCP.
Finland	See answer above.
France	Strictly speaking there are no provisions about that but the general principle above mentioned should apply.
Germany	
Greece	Under Article 238A of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, when a suspected or accused person has been subject to questioning with the assistance of an oral translation or an oral summary of essential documents a report is written or a reference is made in the report written by the competent each time authority.
Hungary	During questionings or hearings the interpreter may translate orally any document.
Ireland	It is not the practice to record consultations between lawyers, clients and translators when the translator is translating written documents.
Italy	In practice, only if the defence accept it instead of written translation
Latvia	Interpreter is informed about the rights and duties of an interpreter, as well as the liability regarding false translation or a refusal to translate. Interpreter confirms his or her awareness with a signature in a separate document or in protocol.
Lithuania	As mentioned above, it is being recorded during the court hearings only.
Luxembourg	No record keeping of such translation
Malta	No information
Poland	Oral translation or oral summary of essential documents always need to be fixed in separate minutes during criminal proceedings. Minutes are fundamental documents and they are sources of proofs. (Such minutes are always written in Polish). Oral translations or oral summaries could be also recorded by using devices recording picture and sound as services assisting the questioning of suspects or accused persons or hearing of witnesses who speak foreign language. Expressed in foreign languages words of suspects, accused persons or for instance witnesses should be recorded, but it isn't a rule in practice. General norms in this matter might be derived from the Article 147 of CCP (adequately from its § 1 and § 2). Such recordings are attachments to the minutes of the procedural activities with participation of a suspect or an accused (recordings are subsidiary to minutes). I have no concrete data concerning the practice in this field.
Portugal	When the defence requests. In these cases, it is registered in the judicial process that there was intervention of a translator.
Romania	

Slovakia	Sec 28 para 5 CCP instead of written translation it is permitted to interpret the document or its essential content without prejudice to the fairness of the proceeding. It is recorded in the Minutes of the proceeding whether complete document or its parts were translated.
Slovenia	It is unclear whether there should be any record of oral translation or oral summary of essential documents. In practice, the essential documents are translated in written form.
Spain	There is no legal obligation to record this. The law says that the judge « may » order the recording.
Sweden	When oral translation or summary has been made, this should be noted by using the existing recording procedures.
The Netherlands	The statements translated for the suspect are not reported.
UK	**England and Wales** As above.
	Scotland Reg 14 of the 2014 Regulations provides that the clerk of court must make a record of the fact that an oral translation or oral summary of an essential document is provided.
	Northern Ireland Police station -recorded on custody record that translated copy key documents provided, client required to sign to acknowledge receipt

(c)	*waiver of the right to translation?*
Austria	The waiver of the right to translation must be recorded in writing.
Belgium	If the concerned person accepts to be interrogated and to answer in the language of the proceedings, (s)he may not claim afterwards that the procedure was not fair.
Bulgaria	The national law requires that the occurrence of waiver of the right to translation shall be noted in accordance with the recording procedure in Bulgaria. In practice this is always done without any exceptions whatsoever.
Croatia	See under c)
Cyprus	According to Article 8 (d) of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), (d) when a person has waived the right to translation, the competent authority records the event in the relevant file or/and the minutes of the procedure
Czech Republic	Any waiver shall be recorded.
Estonia	Not applicable -- see question 2 f above.
Finland	See answer above.
France	A record must be kept about that (Circulaire du 31 octobre 2013, page 5).
Germany	
Greece	Under Article 238A of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, when a person has waived the right to translation a report is written or a reference is made in the report written by the competent each time authority.
Hungary	One may waive the right of interpretation and the right of translation. One may not revoke the waiver but may ask for an interpreter or translation.
Ireland	A competent police investigator would if there were doubts about the adequacy or competence of the suspect in English insist on having the suspect confirm at the beginning of an interview and on audio-visual tape that they are happy to proceed in English notwithstanding that a translator in their own language could be procured. Equally in Court if a judge was of the view that there was an issue concerning translation he would as a matter of prudence offer to adjourn the proceedings to enable a translator be brought to the Court and this would be recorded on a digital audio recording.
Italy	No, see question a)
Latvia	Right to translation can't be waived.
Lithuania	No possibility to wave the right to translation.
Luxembourg	No record keeping of such translation
Malta	Minuted in proceedings
Poland	In Poland a suspect or an accused who doesn't speak Polish language cannot waive the right to interpretation or translation.
Portugal	When the suspected or accused person understands clearly the Portuguese language.
Romania	
Slovakia	Should the accused decide to waive the right to translation, the waiver is recorded in the Minutes of proceeding.
Slovenia	The right to translation can be waived by the suspect of accused under the condition that the suspect or accused understands the language of the procedure and that he/she waives this right in written. It is unclear under the law whether this waiver can be revoked.
Spain	Recorded in writing, not by audiovisual means.
Sweden	As mentioned under Question 2(f) there is no practice of waiving the right in this regard.
The Netherlands	The Code of Criminal Procedure does not contain a provision about the way in which the right to an interpreter or a translator should be relinquished in situations of interrogation. In practice this means that, when the suspect states that he has a (thorough) command of the Dutch language, no

	interpreter will be engaged for the interrogation. When a suspect who actually has a little command of the Dutch language - and might thus miss nuances pertaining to relevant criminal law in the questions of the police or cannot state his views adequately - and is able to manage, nothing will be included in the report as to the extent of the considerations to engage an interpreter or as to whether the right to an interpreter has been waived.
UK	**England and Wales** In the police station, a note or record of the waiver by a suspect of the right to translation is recorded in a computer generated document called a 'Custody Record'. A custody record is created for all persons detained and questioned in a police station whether or not they are arrested. The custody record is stored electronically. The relevant entries on the custody record would be made by the custody officer. The custody record of a person detained or questioned at a police station is disclosed (subject to a relevance test) to a defendant at trial. Similarly, the waiver of a right to translation is recorded on the court record, which is kept with the court.
	Scotland Reg 14 of the 2014 Regulations provides that the clerk of court must record the fact that a waiver has been given by a person who is the subject of criminal proceedings.
	Northern Ireland Noted in court record or custody record

Question 5 ***What is the situation in your Member State – covering both national law and national practice - with respect to costs regarding:*** (a) *whether all costs are met by your Member State? if not, which costs are not met?*	
Austria	All the costs of interpretation and translation provided according to § 56 StPO are borne by the state (§ 381(6) StPO). Only if interpretation and translation is provided at the request and to an extend exceeding what is required by law, the suspect will have to reimburse the costs if convicted.
Belgium	All the costs of oral and written translation are entirely and definitively covered by the State. Not recovery takes place against the accused if (s)he is declared guilty (or against the plaintiff if the accused is acquitted).
Bulgaria	In Bulgaria, both under the national law and in practice, all the costs of interpretation and translation resulting from the application of the rights to interpretation and translation are met by the State, irrespective of the outcome of the proceedings.
Croatia	According to Article 145, Paragraph 6 of CPC all the costs of interpretation and translation are met by the state.
Cyprus	According to Article 7 of the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L.18(I)/2014), the Republic of Cyprus meets all costs of the translation and interpretation provided by the Law, regardless of the outcome of the criminal proceedings or the execution of the European Arrest Warrant.
Czech Republic	In ex officio cases (of mandatory defence when the defence lawyer is appointed by a court, unless the accused chooses his own defence lawyer) all costs on the interpretation are covered by the state, regardless of the result of the criminal proceedings. In cases where the defence lawyer is representing his client on the basis of their agreement, all costs on interpretation before the law enforcement authorities are covered by the state, regardless of the result of the criminal proceedings. However, any interpretation outside the actions before the law enforcement authorities as e.g. preparations for the questionings, hearings are covered by a client.
Estonia	The costs of translation/interpretation are met by the authorities who have the obligation to ensure translation/interpretation (§ 173(4), § 177 p 3, § 178 of CCP).
Finland	All costs are met by the state, insofar as translations are deemed necessary. If translations are done by the suspect/defendant himself or via counsel, there is a great risk that the costs are not met. Regarding interpretation all costs are met during the pre-trial investigation stage and court proceedings. Also costs for interpretation of negotiations between the defendant and counsel are met “if the legal protection of the defendant so requires” to a reasonable amount.
France	All costs rest with the Ministry of Justice directly or indirectly.
Germany	
Greece	Under Article 238B of the Greek Code of Criminal Procedures, as replaced by Law 4236/2014 and practice, interpretation and translation costs of decisions depriving a person of his/her liberty, of indictment documents and related to the indictment judicial decisions, irrespective to the outcome of the procedure, shall be borne by the State. Exceptionally, the costs are borne by the suspect or the accused if he demonstrably can pay them. In practice the costs are covered solely when the interpretation is held before the authorities, but not in order to ensure the communication with the counsel, or in general prepare the defence (e.g. the cost of translating documents is not covered).
Hungary	Only the costs of the official interpreter/translation of met by the state.
Ireland	Typically were a person is legally aided in their defence they will not carry any cost in relation to the translation. The reality however is that this means that they will only get as much translation as the Court will certified. This does not always include written documents and might limit the number of consultations.

	A privately funded person would wish all documents that had to be considered to be translated so they could be fully understood as with correspondence from their lawyer etc.
Italy	The costs are anticipated by the State and recovered if the accused Is found guilty
Latvia	All costs are met.
Lithuania	All costs are met by Lithuania.
Luxembourg	Costs are covered in case of judicial assistance, as well as in case of non judicial assistance for every translation request done by an authority in the frame of the procedure.
Malta	Services ordered by the Court are borne by the State.
Poland	In Poland, according to Article 72 § 1 CCP a suspect (an accused) who doesn't speak Polish in a sufficient degree has the right to free assistance of an interpreter or a translator. In turn, another Polish act – act of 27th of July, 2001 – law on the structure of common courts (consolidated text – Journal of Laws 2015, item 133 with subsequent amendments) confirms the right to free assistance of an interpreter or a translator of every person who doesn't speak Polish language in a sufficient degree within proceedings before courts (Article 5 § 2). According to the Article 618 point 7 CCP, expenses of the State Treasury include, among others, wages of interpreters and translators. The party of the criminal proceedings – a suspect or an accused – is exempted from any costs of interpretation or translation in his or her criminal case. A suspected person – when he or she is detained – is immediately instructed about the right to free assistance of an interpreter or a translator. Due to Article 619 § 3 CCP the State Treasury covers costs connected with the assistance in criminal proceedings of an interpreter or a translator in the scope necessary to ensure for a suspect or an accused his or her right to defence. Costs resulting from the mentioned assistance charge solely the State Treasury irrespectively of the outcome of the criminal proceedings. If the participation of an interpreter or a translator in criminal proceedings exceeds the necessity to ensure for a suspect or an accused the right to defence, generally the costs of such participation are covered by the State Treasury temporarily and afterwards – taking into account among others the final results of the criminal proceedings – the costs may be returned in line with general principles indicated in the Code of Criminal Proceedings by a person who was sentenced. If there appears doubts that a concrete aspect of the participation of an interpreter or a translator is linked with the right to defence, it seems that the rule in dubio pro reo should be applied. The wages of interpreters or translators are determined and conferred by a court or by a body conducting preparatory proceedings (Article 618l CCP). An interpreter or a translator has the right to reimbursement of all travel and stay costs (Article 618g in relation with the Article 618a CCP) as well as the right to reimbursement of lost income if his or her services weren't applied in criminal proceedings (Article 618h § 1 CCP). The wages of interpreters or translators are conferred upon their motion (Article 618k CCP). A sworn translators gets a salary for his or her services in accordance with the Article 16 section 1 of the Act of the 25th of November, 2004 on the profession of a sworn translator and the rates of such salary are determined by the ordinance of the Minister of Justice of the 24th of June, 2005 (Journal of Laws of 2005, No 15, item 131 with subsequent amendments). These conditions are not applicable to interpreters or translators who aren't sworn interpreters or translators. There is a lack of provisions directly addressed to the salary for the interpretation or translation service delivered by persons who are not registered as sworn translators. They could be treated as experts or specialists and they can get their salaries on the grounds of statutory and ordinance provisions concerning salaries of experts or specialists.
Portugal	If the lawyer is nominated all costs are met by the Member State. In the other cases are included in costs procedure.
Romania	
Slovakia	Yes. The costs of interpretation and translation are determined by the law enforcement body or court that assigned the interpreter and all costs are met by this body. Should the body not agree with the statement of costs submitted by the interpreter/translator, it decides on the remuneration by a ruling. It is possible to file a complaint against such ruling.
Slovenia	Under the law, all costs are met by the State.
Spain	Any costs are covered by public means.
Sweden	All costs for interpretation during hearings and interrogations as well as translations made by the investigative authorities and courts are met directly by the Swedish state. The lawyers´ costs for the use of interpretation during consultations between the lawyer and the client are met indirectly through a recovery procedure.

	It is most uncertain whether costs for written translations provided by the lawyer are met by state.
Switzerland	
The Netherlands	The costs of engaging an interpreter are mainly paid from Ministry of Justice budgets. As far as translations are concerned, they certainly include the procedural documents that have been translated at the request of the suspect, as well as the providing of copies of orders with regard to police custody and pre-trial detention and the extracts of sentences. Regarding the services of interpreters, the costs of assistance of interpreters during interrogations by the police and the examining judge as well as at the trial are met by the State. For brevity's sake I refer to article 1 paragraph 4 of the Criminal Cases (Fees) Act. With regard to the costs of interpreter assistance between counsel and suspect, the costs are fully met in case of assistance on the basis of government-funded legal aid. When a suspect is not entitled to receive government-funded legal aid, the costs of interpreter assistance must be paid by the suspect.
UK	**England and Wales** Whether the costs of an interpreter are met by the Member State or not depends on who the interpreter is booked by and whether the Defendant is legally aided. The CPS is responsible for booking and paying for its own interpreter. The Court is responsible for booking and paying for the interpreter for the Defendant. In relation to defence witnesses the Defendant is responsible for booking the interpreter and the costs are met by the court. Although a convicted defendant may face an order for prosecution costs and a fixed 'criminal courts charge' (introduced this year for offences committed after 12 April 2015), such orders and charges are not intended to cover the cost of interpretation or translating services. How monies recovered from a 'criminal court charge' are distributed within the Ministry of Justice is unknown.
	Scotland Regulation 16 of the 2014 Regulations provides that any interpretation assistance or any written translation, oral translation or oral summary of an essential document provided to a person under those Regulations must be provided free of charge.
	Northern Ireland Yes if legal aid/criminal defence certificate granted. In practice never seen a defence application for translation refused. Widgery criteria re grant of legal aid has specific criteria that Legal aid should be granted of defendant can't follow/ understand proceedings. This includes due to language difficulties

(b) whether your Member State meets the costs directly or indirectly (e.g. through a recovery procedure)?	
Austria	Depending on the type of interpreter (freelance enrolled in the list; member of the Justizbetreuungsagentur) the fees or the salary are directly paid by the institution appointing the interpreter
Belgium	(see precedent answer).
Bulgaria	All the costs are met directly by the State.
Croatia	According to Article 145, Paragraph 6 of CPC all the costs of interpretation and translation are met directly by the state.
Cyprus	According to the Police Standing Order 5/48 there is a form that must be filled out with specific details (e.g. name. surname, ID number, address, etc), which must be signed both by the interpreter and the investigator. Then this form is forwarded to Finance Directorate of the Police for the payment of the interpreter directly.
Czech Republic	In case the law enforcement authority appoints the interpreter, it pays the interpreter directly for every act of interpretation, the invoices are stored in the case-file. However, if the ex officio defence lawyer (appointed by a court, whose defence costs are covered by the state once the case is finally concluded) needs an interpreter outside of the police station or a court, i. e. when he is having consultation with his client in the office or in a prison before a questioning or a hearing, he has to arrange the interpreter and pay him from his own resources and later claim the reimbursement from the state. Such procedure seems inappropriate as the defence lawyers have to invest their own money into ex officio cases.
Estonia	The Government meets the costs directly (§ 178 of CCP).
Finland	If the authorities have arranged for the interpreter, the costs are met directly. If the counsel arranges for the interpreter, the costs are usually added to the counsel's invoice and recovered from the state afterwards. It is also possible especially during court proceedings, that the interpreter sends his/her invoice directly to the court even if the counsel would have arranged for the interpreter. The costs for translation are met directly insofar as translations are deemed necessary by the authorities. If translations are done by the suspect/defendant himself or via counsel, there is a great risk that the costs are not met.
France	See above
Germany	
Greece	There is no such provision.
Hungary	The competent authorities cover the costs directly.
Ireland	There is no recovery procedure adopted in respect of the costs of translation.
Italy	As above
Latvia	The costs are met directly.
Lithuania	All costs are met directly.
Luxembourg	Indirectly the recovery procedure exists in the frame of the judicial assistance, the lawyer just has to submit the bills of translation costs to the Bar. They will check the fees, give their agreement, and then the ministry of justice will reimburse these fees in a quite reasonable time. In case of high amounts, the lawyer may ask an advance payment relative to the costs of translation.
Malta	A recovery procedure is possible.
Poland	In Poland the State Treasury always meets costs of interpretation and translation directly. If the participation of an interpreter or a translator in the criminal proceedings exceeds the necessity to ensure for a suspect or an accused the right to defence, the costs of interpretation or translation are paid by the State Treasury temporarily in advance, and then – if according to the general rules a sentenced person will be finally charged with costs and he or she avoids to pay them – the recovery procedure can be applied.

Portugal	When the lawyer is directly nominated.
Romania	
Slovakia	Directly.
Slovenia	The costs are met directly.
Spain	There is no mechanism to recover the cost.
Sweden	See the answer under (a) above.
The Netherlands	The costs are reimbursed directly by the State, through the Sworn Court Interpreters and Translators Act.
UK	**England and Wales** The costs are met directly by the Ministry of Justice.
	Scotland The costs may be met by Police Scotland, the Scottish Courts and Tribunals Service, Crown Office and Procurator Service, or the Scottish Legal Aid Board, depending on the stage at which translation/interpretation is provided.
	Northern Ireland Directly through laa budget

Question 6 ***Has the directive brought important changes on the right to interpretation and translation in criminal proceedings in the legislation and practice of your Member State? what are the main aspects that could be improved, both at EU and national level?***	
Austria	The major improvement is that interpretation and translation must be provided free of charge. Even though the case law required interpretation for suspects unable to understand or to speak the language, the cost had to be borne be the suspect if convicted. Moreover, there were no provisions as regards the translation of essential documents.
Belgium	As already mentioned above, the Directive 2010/64 has not (yet) been transposed in the Belgian law.
Bulgaria	In my country the Directive has brought important changes on the right to interpretation and translation in criminal proceedings in the following aspects: a) enlarging the scope of documents that are to be translated; b) introducing certain requirements as to the quality of interpretation and translation and the qualification of interpreters and translators, although these requirements are not to be assessed as fully sufficient for the time being - please see the answer to Question 3 (a). The critical notes as formulated in the answer to Question 3 (a) manifest that quality is the main issue. These notes outline the scope of the possible future improvements at the national level.
Croatia	These kind of rights and procedures defined by this concrete Directive, were already inherent part of the Croatian criminal procedure.
Cyprus	For the implementation of the Directive on the Right to Interpretation and Translation in Criminal Proceedings a new Law was enacted in 2014 (L. 18(I)/2014), which safeguards all rights provided by the EU Directive apart from cases I mentioned above. Even though some of these rights were provided in other national legislation (e.g. communication with a lawyer in a language the person understands), the enactment of the Law 18(I)/2014 safeguarded the rights regarding interpretation and translation, providing better protection of the right to a fair trial. What could be improved at national level is the way the right to challenge the decision of the competent authority is exercised. (See answer in Question 2(d)). According to the Law the suspect or the accused can make an oral complain to the competent authority and the competent authority decides on the objection, recording in the minutes of the procedure both the oral objection and its own reasoned decision on the objection. There must be an amendment of the law so that the reasoned decision of the competent authority is made subject to judicial review. Also see my suggestions in my answer to 2(f) and 3(b)(c).
Czech Republic	The new implementing legislation has brought rather slight changes into the system. The implementing legislation has newly specifically enacted: - The interpretation of the communication between the suspect and accused and the defence lawyer, though the wording of the implementing legislation is in my view not in full compliance with the Directive; the interpretation of the respective provision of the Directive should be clarified at the EU level; - The right to translation, at least oral, of other documents than those which are enumerated as documents that need to be translated obligatorily; the implementing provision is, however, rather vague and leaves a broad discretion to the authorities; - It has been specified that all interpretation and translation rights belong not just to the accused but also to the suspect. New act on interpreters should in my opinion set up a system with elaborated criteria for registration of interpreters, quality checks and appropriate sanction mechanism. Challenging of the quality of interpretation, including legal remedies, is not specifically enacted in the national legislation.

	The link to the establishment of a system of audio recording of questionings or hearings to prove the quality of interpretation, if contested, should be also explored.
Estonia	The implementation of the directive brought some important changes, esp a) the right to interpretation for meetings with counsel; b) the right to interpretation/translation of essential documents. Much needs to be done to ensure the interpretation/translation is of sufficient quality.
Finland	At least according to Helsinki District Court – the largest court in Finland – the Directive has brought practical changes insofar as translations are concerned. Nowadays both the indictment and the judgment are usually translated especially if requested, whereas earlier the practice varied. We would like to see stricter legislation on what documents would be deemed as necessary to translate, since now especially at the pre-trial investigation stage it is left totally to the discretion of the head of investigation and no effective remedy exists to challenge decision.
France	The main change is the right to interpretation during interviews with the lawyer.
Germany	
Greece	With the implementation of Law 4236/2014, which incorporated the directive, the right to interpretation and translation on the rights of the accused was strengthened. At national level, there should be more punctual and better information of the accused about the charge and the material gathered by the authorities and the presence of an interpreter during communications with a counsel should be facilitated. Also, the defendants should be enabled to give evidence, at least in the preliminary proceedings, in writing, in a language they understand, to ensure that they understand the content of their testimony. Presumably, it would be advisable to work with the respective embassies, in order to enrich the registers of interpreters and translators. Moreover, strict criteria, possibly even exams for someone's entrance in the registers, should be set. As a further improvement of the proceedings, I would suggest the establishment of independent translation centers (with EU funding as well), in order to recruit translators for languages not particularly well known, especially in view of the great immigration problem that our country is facing. Given the large numbers of immigrants crossing the boarders daily, the possibility of them committing various offences is high.
Hungary	No, such rights and procedures were already inherent part of the Hungarian criminal procedure.
Ireland	Perhaps because of the historical position regarding the use of the Irish language in Courts and other official fora there was a greater understanding on the part of the judiciary of the importance of according translation and interpretation rights. This was particularly emphasised also for instance in the directive on the European Arrest Warrant. As stated even prior to the current directive there was an understanding of the importance of translation. The concern is that this is being paid " lip service" only and that the translation provided is the bare minimum both in terms of oral translation only and in terms of choice of translator and quality of translator.
Italy	Yes, especially in terms of written translation. The quality of interpreters and translators must be improved by a previous selection and training.
Latvia	The law has been supplemented with the right to an interpreter in situations when the person does not have the knowledge of the official language, so the person may use the language he or she has knowledge of also during the meeting with the defence counsel, free of charge. The assistance of an interpreter is ensured by the person directing the proceedings, in the following cases: - to prepare for the interrogation within the pre-trial proceedings or for the adjudication at a court hearing;

	- to draw up a written complaint regarding the conduct of an official who handles the criminal proceedings or regarding amending or revocation of an adjudication and application of a procedural compulsory measure; - to draw up a document necessary for the adjudication of the case under written procedure; - to draw up an appellate or cassation complaint.
Lithuania	The directive did not bring any important changes on the right to interpretation and translation in criminal proceedings in Lithuania. To my opinion, the obligatory provisions should be incorporated in the directive in regard of providing the suspect and accused with the interpretation while he/she is communicating/consulting with the legal council in custody, remand prison, prison, at the police station and the court where the communication is related to the ongoing pre-trial investigation and/or court hearing. In regard of ensuring the quality of the interpretation/translation where independent translators/interpreters with special education and preparation only could render such services the requirement of the establishment of special register should be indicated as obligatory in the directive.
Luxembourg	Definitely not, as it is not implemented
Malta	No major changes
Poland	Regulations of the EU directive 2010/64 implemented in Polish criminal proceedings created a possibility to improve and strengthen a position of suspects or accused persons in the context of their right to defence and the right to a fair trial. Implemented regulations have positive impact on the practice (there is a greater awareness of officials of investigation and criminal justice bodies as well as other figures of criminal proceedings, especially suspects and accused persons, that there exists the right to free assistance of interpreters or translators and what are possible consequences of infringement of this right). In Polish doctrine it is emphasized another aspect of the right to interpretation or translation – the asymmetry between positions of suspects (accused persons) and injured persons (victims) in criminal proceedings in the area of the assistance of interpreters or translators. The general postulate is that suspects (accused persons) and injured persons (victims) should have the same guarantees in criminal proceedings - the equal right to access to free assistance of an interpreter or a translator in a criminal case (see e.g.: B. Zygmont, Prawo do korzystania z bezpłatnej pomocy tłumacza w postępowaniu karnym w świetle standardów europejskich, 'Państwo i Prawo' no. 7, 2004, p. 87; M. Olesiuk-Okomska, Wpływ regulacji Unii Europejskiej na udział tłumacza w polskiej procedurze karnej [in:] I. Sepioło-Jankowska (ed.), Reforma prawa karnego, Warszawa 2014, pp. 514 – 516).
Portugal	No in which concerns Portuguese legislation which already apply the main aspects of this new directive. No either in which concerns the practice, since this directive doesn't go as far as it should go, so that to assure a professional interpretation and translation. The main aspects that should be improved are: 1. Both interpreters and translators should have legal qualifications; 2. The States should promote and maintain a Register of Certified Legal Translators and Interpreters.
Romania	
Slovakia	The important changes were in the translation of the relevant documents in the criminal proceedings. The interpretation was insured also before the transposition of the Directive. The lack in the regulation is maybe the interpretation of the consultation between the defence counsel and the accused person e.g. in the jail.
Slovenia	Yes. The directive has brought changes on the right to interpretation although Slovenian procedural law had also before the enactement of the directive in 2014, quite extensive right to interpretation and translation.
Spain	The directive has brought about important changes: the right to translation. Before the directive, Spanish system only recognized the right to interpretation. However, in practice, there are lack of sufficient number of interpreters and translators and lack of enforceability of translation as regards of important documents of the procedure.
Sweden	The Directive has been implemented into Swedish law partly by application of existing law, and partly by legislative amendments. The Amendments has entered into legal force 1 October 2013. There is a general awareness of the right to interpretation at every stage of the Swedish criminal proceedings and within all of the relevant authorities. However, a tendency is that certain obligations that can be derived from the Directive have been passed on to the lawyer. Improvements could be made, especially concerning the right to translation.

	In order to ensure a high quality of the interpretation and translation services it is important to increase the number of qualified interpreters and translators.
The Netherlands	The implementation of the Directive partly regarded a codification of an already existing practice, of which the right to translation of documents and the providing of the translated summons catch the eye.
UK	**<u>England and Wales</u>** The provision of interpretation and translation services at the police station and at trial was overhauled in 1998 in England and Wales following reforms introduced by the then Lord Chancellor's Department. However, the changes introduced were not formalised as rules of procedure. The implementation of the Directive has, as discussed above, introduced rules of practice and procedure which provide a far greater degree of protection for suspects and defendants who do not speak or understand English. The Codes of Practice are more prescriptive than the Crim PR in identifying which categories of documents should be translated. The Crim PR permit far greater discretion. Decisions as to what documents are to be translated as essential to the understanding of the case are a matter for the judge. It is difficult to envisage circumstances where there could be a greater degree of prescription in the Crim PR, as no two cases at trial are the same. The difficulty, however, is that the Directive has been implemented by way of amendment to the Codes of Practice issued under the Police and Criminal Evidence Act 1984 rather than by legislation. The Codes of Practice are not statutory instruments and the Notes for Guidance which assist in clarifying some of the amendments brought about by implementation of the Directive have an even lesser status. Failure to comply with any provision of a Code does not of itself render the individual concerned liable to criminal or civil proceedings. [PACE 1984, s.67(10)] Remedies for breaches of the Codes of Practice lie by way of complaint to the Independent Police Complaints Commission and, more importantly, may result in the inadmissibility of evidence obtained in breach of the Code in subsequent criminal proceedings. Similarly, breaches of the Crim PR (for example, where the Crown Prosecution Service fail to translate essential documents in its case against the defendant in good time before trial) by parties to the proceedings can only be dealt with by staying the case and an abuse of process (highly unlikely); excluding the untranslated evidence; adjourning the trial; or exceptionally, making an order for wasted costs against the defaulting party.
	<u>Scotland</u> Interpreting services were already provided to the accused in Scotland for a number of years prior to the directive. The directive has changed the provision of translated documents for accused persons.
	<u>Northern Ireland</u> Translation costs come directly out of laa budget, there was no provision to increase the budget as a result of this increased burden, massive cuts to laa budget are ongoing justified by the claim that the cost of laa is too high

Question 7 ***Do you have comments on an article of the directive not covered by any of the questions above?***	
Austria	No comment.
Belgium	Yes, the Directive should have stipulated under article 2.2. that "the Members shall ensure that the translator interpreting the communication between the suspect and his/her lawyer, is held to a strict professional secrecy toward the investigative and judicial authorities." or something like this, to ensure the strict and effective confidentiality of the communication between lawyer and suspect who does not speak the same language. In Belgium, according the precedents of the high court (cour de cassation) a translator is held by a professional secrecy criminally sentenced in case of breach. However, a clear and explicit prohibition as mentioned above would have been perhaps adequate in the Directive to ensure that this duty of secrecy in the head of the translator really exist in each member State.
Bulgaria	No, I do not think there is an article not covered by the questions above.
Croatia	No.
Cyprus	No.
Czech Republic	No.
Estonia	No
Finland	
France	None.
Germany	
Greece	No.
Hungary	No.
Ireland	Not at present
Italy	No
Latvia	No.
Lithuania	No further comments obliged.
Luxembourg	No
Malta	No
Poland	Here, only one remark to the Article 6 of the EU directive 2010/64 concerning trainings will be made. It's necessary to promote by a law-maker on a larger scale the idea of continuous education and professional trainings developing skills and competencies both of the officials of investigation and criminal justice bodies (i.e. policemen, prosecutors, judges), lawyers and interpreters (translators) in their reciprocal relations during performing their work within criminal proceedings. It will be valuable for getting higher quality of interpretations (translations) and guaranteeing the fairness of criminal proceedings at its each stage. It's important to add that the regulations of Polish law implementing the directive 2010/64/EU on the right to interpretation and translation in criminal proceedings are also included in the Code on Proceedings on Petty Offences of the 24th of August, 2001 (consolidated text – Journal of Laws of the 26th of March 2013, item 395 with subsequent amendments). The Article 20 § 2 of CPPO states that if a person who has been charged with committing of a petty offence doesn't speak Polish language, a motion for punishment (an indictment) or any decisions which are challengeable or which conclude proceedings shall be announced or served upon the mentioned person adequately together with interpretation or translation. In turn, the Article 20 § 3 of CPPO authorizes to the proper application of the provisions of the Code of Criminal Proceedings of the 6th of June, 1997 declaring a suspect's or

	accused person's right to free assistance of an interpreter or a translator if such person doesn't communicate in Polish language in a sufficient degree as well as referring to situations of the mandatory participation (assistance) of an interpreter during criminal proceedings activities engaging a suspect or an accused (Article 72 § 1 and § 2 of CCP). In the context above it's worthy to remark that in Poland, in proceedings on petty offences, the principle is that the minutes are taken from every activity which is considered as having a great significance for the case (particularly, the minutes are taken at court trials and court sessions as well as during evidence activities undertaken apart from the trial). This principle is expressed by the Article 37 § 1 of CPPO. By the way, the Code on Proceedings on Petty Offences of 2001 provides that during the trial the minutes are taken in writing as well as the trial is documented by minutes recorded by using a device which registers the sound or both the picture and the sound (Article 37 § 2).
Portugal	No comments.
Romania	
Slovakia	See answer to Q7.
Slovenia	No.
Spain	It would appropriate to establish uniform guidelines in all State regions. In addition, adequate human and material resources are needed in order to guarantee translation of relevant documents and to ensure interpreter assistance to lawyer during the criminal proceedings
Sweden	
The Netherlands	Observation 1. Under article 3 paragraph 8 of the Directive the right to translation can only be waived when the suspect or the accused had prior legal advice (or had otherwise been informed about the consequences of this waiver and this waiver has been given unequivocally). Article 7 of the Directive requires that such waiver is registered by the national authorities. This has not been transposed in national Dutch law. Observation 2. As stated, due to an omission in the legislative process, the rulings of the Supreme Court do not fall within the scope of article 365 paragraph 6 NCCP - translation of the most important decisions of the sentence or ruling. This is not in keeping with article 1 paragraph 2 of the Directive on the basis of which the right to interpretation and translation is also applicable in possible appeal proceedings. Observation 3. The national situation does not include a right to the presence of a lawyer during the police interrogation. Police interrogations are only recorded aurally or visually in exceptional cases. The recording of the in-terrogation is carried out by the police in the report of the interrogation. At the end of the interrogation, the Dutch version of the interrogation report will be read to suspects through an interpreter, after which the signing by the suspect of his statement will take place. The suspect's signing of the report has an important evidential value. The suspect cannot determine whether the interpreter correctly translated the report as drawn up by the police, which carries the risk of signing for the correctness of the statement while the report contains inaccuracies. He will only find out when dis-cussing the report with his counsel - much - later. For lack of tapes, it cannot later be determined whether the translation was incorrect or whether the suspect alters his statement in a later phase of the proceedings.
UK	**England and Wales** No.
	Scotland No.
	Northern Ireland No.

Question 8 ***Do you have any good practices to pass on, that you have not already mentioned? (N.B. This question is particularly important, given that one of the sections of the final report will focus on good practices.)***	
Austria	Even though not required by law, a very good practice in court hearings would be the constant translation of everything that's going on in the ears of the suspect (by a whispering interpreter). This is the only means to really provide the suspect with the possibility to actively engage in the proceedings (e.g. to interrogate witnesses). Bad practice is - using poorly qualified interpreters; - the replacement of written translations by oral translations; - no translation or only summaries of what's happening in court (e.g. witness statements)
Belgium	
Bulgaria	In my view there is an example of good practice in Bulgaria going in a helpful direction beyond the requirements of the Directive itself. The example refers to the application of the provision of Article 1.3 relating to the procedures where administrative sanctions are imposed by an authority other than a court (very often these sanctions are imposed in connection with minor traffic offences). Some courts (e. g. those in the cities of Plovdiv, Balchik, Yambol), relying on the principle that the level of protection shall never go below the standards set forth by the European Convention on Human Rights and the European Charter of Fundamental Rights, have firmly held that the offenders, who did not understand the language of proceedings, should have had interpretation and translation provided for them not only before the court of appeal, which is the standard under Article 1.3 of the Directive, but in the course of the entire administrative procedure resulting in imposing the administrative sanction before appealing this sanction before a court. These courts, making their decisions on the grounds of the above principle and acting as courts of appeal, have constantly quashed the administrative sanctions that had been imposed with no interpretation or translation having been provided in the entire course of administrative proceedings. However, this good practice is not at all prevailing. The majority of the courts (e. g. those in the cities of Dobrich, Burgas, Vidin, Stara Zagora, Karlovo) keep strictly to the wording of Article 1.3 in their practice by recognizing the right to interpretation/translation only in the course of the court proceedings of appeal.
Croatia	No.
Cyprus	In 2006 the Independent Authority for the Investigation of Allegations and Complaints Against the Police (IAIACAP) was created by the Police (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006 (N. 9 (I) / 2006). The IAIACAP issues an Annual Report which records its work during the year. In their latest report (Annual Report 2013) they criticize the Police for not complying with the provisions of the Rights of Persons Arrested and Detained into Custody Law of 2005. Their observations are based on the complaints filed by Greek Cypriots, EU nationals and people from third countries. In their recommendations they suggest the amendment of the current law so that the accused has the right to communicate with the IAIACAP. I believe that this is a valid recommendation and it will add an important safeguard of the rights guaranteed by the said legislation and the rights guaranteed by the Interpretation and Translation during the Criminal Proceedings Law of 2014 (L.18(I)/2014). I believe that the establishment of the Independent Authority for the Investigation of Allegations and Complaints Against the Police in 2006 is a good practice because even though we have more or less the legal framework demanded by the European Union in reality there are problems in complying with the law. Furthermore an inclusion of the right to communicate with the said independent authority in the legislation and also an expansion of the current IAIACAP which will include permanent criminal investigators, translators, photographers and other personnel will increase the confidence of the Public that the Police is under constant scrutiny and they comply with all the provisions of the Law. This will

	improve the administration of Justice and the protection of fundamental human rights and the rights safeguarded by the said Directive.
Czech Republic	No.
Estonia	The rule that if an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, the act is null and void, works well as a guarantee that the right to interpretation is respected. Introduction of sworn translators as regulated profession is also welcome.
Finland	
France	One of the main risks is the commercial link of dependence between the interpreter and the appointer broadly conceived as the ministry of justice. Therefore, interpreters have often the tendency to adopt a favourable approach towards the person or the body that appoints him or her (police, prosecutor, judge). To cut such a link, a possibility of waiving an interpreter of the ground of being to often appointed by the police or prosecutor should ensure an independent and impartial translation.
Germany	
Greece	I would recommend the establishment of direct financing from European projects to ensure the best possible interpretation of the procedural documents.
Hungary	No.
Ireland	For MS to avoid the poor quality control we have in Ireland. For an entirely separate translator to be available to the Defence. The present situation where the same translator fills dual if not multiple roles (e.g interviewing witnesses) is fraught with difficulty.
Italy	
Latvia	No.
Lithuania	There are no good practises to share.
Luxembourg	A good practise consist in the impossibility for a translator to translate simultaneously for pursuant authorities and at the same time for the needs of defence and vice versa.
Malta	Periodic proficiency tests to be retained on the list of interpreters / translators
Poland	In Poland good practices in the field of interpretations (translations) – also in legal proceedings - are generally rooted in the declarative document titled 'Code of a Sworn Translator'. Regulations of this code are hints of competent and ethical delivery of interpretation (translation) services. Unfortunately, they don't concern the interpreters or translators who are not sworn translators (i.e. the profession regulated by statutory provisions). It seems that interpreters or translators in criminal proceedings should always have trouble-free and facilitated contacts with authorities responsible for investigation, preparatory and judicial proceedings in criminal cases as well as with suspects or accused persons and with their lawyers. They should have quick access to files of the criminal proceedings and to all persons and additional materials helpful during preparation of an honest and of a good-quality interpretation or translation. (By the way – they should be personally responsible for the quality of an interpretation or a translation in each case they delivered their services). Interpreters (translators) should be obliged to develop their language competences and specializations in selected legal areas. All of them shall be obliged to maintain the confidentiality resulting from their services.
Portugal	No comments.
Romania	
Slovakia	Everything important have been mentioned above.
Slovenia	
Spain	There aren´t good practices to share.
Sweden	The following good practices can be pointed out:

	- There is a practice of sending a copy of the indictment to the assigned interpreter prior to the court hearing. This practice could be improved by including also other essential documents. - There is a practice of noting any need for translation on the indictment submitted to court, enabling a prompt assignment of an interpreter to the trial. - When lengthy trials, the accused person is often assisted by more than one interpreter. - In cases involving a minor accused, his or her custodians are, if needed and upon request, often provided interpretation during the trial.
The Netherlands	In the Dutch situation all police stations and detention centres have an interpreter telephone at their disposal. All this is implemented by placing a telephone in each interrogation room and where by picking up the phone a direct connection is made with an interpreter agency. In cases of emergency, such as directly upon the arrest of a suspect, this is a good alternative for the presence of an interpreter.
UK	**England and Wales** See comments in main body of questionnaire.
	Scotland Collaborative working across the criminal justice system is key to ensuring there is a coordinated approach to the provision of interpreting and translation services at all stages of criminal proceedings.
	Northern Ireland Telephone interpretation at police station book in – 3-way phone allows discussion between custody sergeant, detained person and interpreter at same time- of great assistance ensuring detained person understands what is going on promptly in what is plainly a very stressful situation

QUESTIONNAIRE RESPONSES - RIGHT TO INFORMATION

Question 1.

What is the situation in your Member State – covering both national law and national practice - with respect to the right to information on procedural rights regarding:

(a) the time when it is provided (i.e. promptly)?

Austria	The suspect must be informed "as soon as possible" (§ 50 of the Austrian Code on Criminal Procedure).
Belgium	The Directive 2012/13/EU on the right to information has not (yet) been implemented in Belgian internal law so far. However the Belgian law already covers all the requirements of the said Directive as stated hereunder (see article 47bis of the Belgian criminal procedure Code, and article 2bis and 16, § 2 of the Belgian law of 20 July 1990 relating to temporarily detention). The requested and pertinent information is indeed given via a written "Declaration of rights" (models attached to the Royal Decree of 16 of December 2011), provided promptly and in due time, i.e. as soon as – and before - a person has to be interrogated as suspect or accused and to any person who, in the course of the questioning by the police or by another law enforcement authority, becomes suspects or accused (see article 47bis, § 5, of the Belgian criminal procedure Code, and article 2bis of the law of 20 July 1990 relating to temporarily detention).
Bulgaria	At the very outset and before I proceed to answering the questions, I have to note that an analysis was prepared by the Bulgarian Ministry of Justice on the need to transpose the Directive into Bulgarian law. The analysis concluded that the relevant Bulgarian legal rules complied with the requirements of the Directive. Therefore, no transposing measures were taken. In my view, the conclusions of the analysis were not entirely correct. It is true that most of the national legal rules concerning the right of the accused persons to information corresponded to the rules of the Directive when it became effective for Bulgaria. However, in my view, *this does not hold true* ***about all the relevant rules*** *of national law*. The discrepancies (where these exist) shall be pointed out in the answers to the questions below. Academicians and practitioners in my country take the view that, as regards the time when the right to information on procedural rights is provided, the *"promptly"* requirement of the Directive is satisfied by both national law and national practice. I share this view.
Croatia	According to the Croatian Criminal Procedure Act (furthermore: the CPA), the right to information on procedural rights is one of the basic principles. It is prescribed in Articles 5, 64 and 239 of the CPA. As well, according to the Article 64 of the CPA suspects or accused persons have the right on information *"promptly"* or *"as soon as possible"*, like it is prescribed in this Directive.
Cyprus	As a general comment it must be stated that the Rights of Persons who are Arrested and Detained Law (L. 163(I)/2005) was enacted to ratify the provisions of Directive 2012/13/EU. According to article 3(1) of the Rights of Persons who are Arrested and Detained Law (L.163(I)/2005) every person arrested by the Police is informed immediately after his/her arrest in a language that he/she understands about his/her rights. The said law applies only when a person is arrested and not before. A suspect before arrest when interrogated by the police should always be cautioned about his right to remain silent pursuant to the Judges Rules (Rule N.II) which are applicable in Cyprus according to section 8 of the Criminal Procedure Law Cap 155. Before being questioned a suspect must be cautioned by informing him that he is suspected of being implicated in the commission of an offence and that he has the right to remain silent. But if he decides to answer the questions and give a statement anything said therein may be used as evidence against him in a court of law. The right to

	silence of a suspect is firmly entrenched in the law of Cyprus. It is safeguarded both by the Constitution and the European Convention of Human Rights that forms part of municipal law. The procedure for protecting this right is laid down in what are known as the Judges Rules deriving from England, designed to provide adequate mechanism for the protection of the right to silence before trial during police interrogation. However there is no obligation on the part of the police to warn the suspect before arrest and before the taking of a statement and/or questioning about his/her right to legal advice. This in my opinion is an omission of Cyprus Law which should be remedied. The scope of the said Cypriot legislation should be extended to include the right to information of criminal proceedings to the suspect before he/she is arrested. Nevertheless in practice there have been numerous complains that the Police do not follow the said procedures. In 2006 the Independent Authority for the Investigation of Allegations and Complaints Against the Police (IAIACAP) was created by the Police (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006 (N. 9 (I) / 2006). The IAIACAP issues an Annual Report which records its work during the year. In their latest report (Annual Report 2013) they criticize the Police that on certain occasions there was lack of compliance with the provisions of the Rights of Persons Arrested and Detained into Custody Law of 2005. Their observations are based on the complaints submitted by Greek Cypriots, EU nationals and people from third countries. In their recommendations they suggest the amendment of the current law so that the accused has the right to communicate with the IAIACAP. I believe that this is a valid recommendation and it will add an important safeguard of the rights guaranteed by the said legislation.
Czech Republic	The right to information applies according to Section 2(13) of the Code of Criminal Procedure (furthermore only "CCP") in every period of the proceedings ("The one against whom the criminal proceedings are carried out must be at every period of the proceedings in an appropriate way and comprehensively informed of his right enabling him full exercise of defence").
Estonia	According to § 351(1) of Code of Criminal Procedure (CCP), a suspect and accused shall be immediately provided information on his or her rights. The same principle is stated in § 33(2) of CCP.
Finland	The Criminal Investigation Act contains a provision on what information needs to be given to a suspect and at which stage. The provision states that the information needs to be given promptly and latest before starting the hearing of the suspect. In Chapter 4, Section 16 of the Criminal Investigation Act, the following is stated of what information needs to be provided to the suspect: 1) the right to use a counsel of one's choosing; 2) the right to obtain a public defender in cases where such right exists under the Criminal Procedure Act; 3) the right to free legal aid and counsel where such right exists under the Legal Aid Act; 4) the right to receive information about the crime he's suspected of, and the right to information about changes in the suspected crime; 5) the right to interpretation and translation of essential documents as provided for by law; 6) the right to remain silent and also otherwise the right not to have to contribute to clarify the suspected crime. The rights need to be given in a language that the suspect understands and in case it's not a question of simplified investigation, they need to be given in a written form. When a suspect is called to the investigative authority for questioning, he/she – if called by a letter – will usually receive a "comprised letter of rights" with the request to attain the interrogation. Quite often the situation is such that the interrogation is agreed for example over the phone, in which case usually no information in writing is separately sent to the suspect.

	Prior to starting the interrogation the suspect receives a letter from the investigative authority containing matters that are notified to the suspect. The suspect is asked to read this letter and the letter is available in different languages. The letter contains in principle the matters describer above in law, but the right to remain silent is formulated in a way that states: "you have the right not to answer to questions put by the police, relating to the suspected crime". On a header level there is stated "The right not to contribute to clarifying the crime and the right to speak", and thereafter it stated specifically that the suspect has the right to speak but not specifically that he has the right to remain silent. This may be a bit confusing and problematic especially for persons not familiar with criminal investigation.
France	According to article 61-1 of the French Criminal Proceedings Code, when the accused is not deprived of liberty, the information can be provided if the accused is summoned by the police with a writ of summon. The writ can either mention the information on the date and location of the offence, the legal references, or not if it is not seen as not possible according to the investigations. It is up to the police to disclose such information or not. The accused if provided with (article 61-1) : - The legal qualification, the date and location of the offence, - The right to leave the police station at any time, - The right to be provided with an interpreter, - The right, to make statements, to answer questions or to remain silent. - The right to be assisted by a lawyer, Nevertheless, if the charges against the accused are including an offense or a crime punished by a minimum of one year of jail, then the person benefits the right to a lawyer. Under such a requirement, no right is granted.
Germany	
Greece	Under the current legislation and in particular Article 99A of the Greek Code of Criminal Proceedings, as inserted by Law 4236/2014 and national practice, such information is provided directly to the suspect or accused. (Article 99A par. 1 of the Greek Code of Criminal Proceedings). The defendant in practice is usually not informed at the time of the arrest, but during his/her first testimony before the authorities (police, investigators etc.)
Hungary	The suspect is informed at the time when he/she is suspected. The accused is informed in writing in the charge, and orally at the beginning of the court hearing. The suspect/accused may request at any time for the information on his/her procedural rights from the competent authorities.
Ireland	Key to understanding the Irish approach to Measure B is that Government adopt a much more restrictive interpretation of "information" than do other MS or as favoured by defence lawyers. Typically in Ireland if a person is not deprived of liberty but is subject to the criminal process, that process commences with them receiving a written summons by post or personal service. This summons stipulates the offence which is alleged to have been committed and indicates a time, date and venue for a first Court hearing. All cases commence in the District court which acts both as a trial Court and as a processing Court for more serious cases which are returned for trial to higher Courts. In a limited number of cases a person might previously have attended a voluntary interview with the police. In cases where a person attends a voluntary interview with the police it would be usual that they would be cautioned prior to the interview on the right to remain silent although the right to silence is heavily qualified in Ireland. It is not usual that persons attending a voluntary interview be advised that they can have a solicitor present with them. Indeed one of the attractions for the police in conducting voluntary interviews rather than interviews under arrest is precisely that there is not an obligation to advise somebody of their entitlement to have a solicitor present.

	On a first appearance in Court it is usual for a judge to enquire as to the means of the accused person. If a person is of limited means and are not in a position to afford legal representation, then subject to limited criteria the Court will advise the person of their entitlement to seek free legal aid. The Court can in addition appoint a solicitor, either of the accused's own choice, or from a panel established to represent the interests of the accused. If language is clearly an issue in the case the Court will also enquire as to whether or not a translator will be required. A Court will not typically advise a suspect that they have a right to remain silent as the facility for questioning a suspect by the authorities has been overtaken by the charges being proferred. It will be for the solicitor appointed to advise his client as to whether or not they should give evidence in the particular circumstances. A court will upon application by a defence solicitor make a direction in cases that are not trivial that the particulars of the State evidence be provided to the accused. This might be either by providing the statements of witnesses or by preparing a précis of the evidence to be given. In more serious cases which have been referred from the District Court for trial in the higher Courts, the prosecution are required to submit a book of documents to the accused and to the Court setting out the prosecution case. This generally will also be followed by the provision of disclosure namely material held by the prosecution but which they do not propose to rely on. This is typically provided late in the day on the eve of trial.
Italy	Under art. 369 bis criminal procedural code, a that requires, under national law, a“letter of rights”, must be served to the accused person before any activity/investigation must be made, under national law, in the presence of a lawyer and, in any case, before calling the accused person for questioning or, at the latest, at the moment of the completion of investigations. The article had been modified in the time in order to the information required by the E.U. Directive on information on procedural rights.
Latvia	Immediately
Lithuania	The information on procedural rights is being provided to the suspect in written form just before his/her first questioning under Notification of Suspicion at the pre-trial investigation stage.
Luxembourg	The information of the above mentioned defence rights is given at the police station mainly orally and the person has the right to talk to a lawyer before the audition. Same information is also given by the instructing judge before the hearing, orally mostly in presence of a lawyer. In both cases the audition reports contain the written formulation of these information of rights. This situation is unlucky because the information should be given former to any hearing and the written proof of notification should also be done in a separate act.
Malta	Immediately
Poland	In Poland, the right to information is one of the most important rights of participants of the criminal proceedings. Duty to inform participants of criminal proceedings is recognized as one of the principles of criminal proceedings and as a manifestation of fair criminal proceedings (manifestation of fair trial). The Article 16 § 1 of the Code of Criminal Proceedings of the 6th of June, 1997 (Journal of Laws of 1997, No 89, item 555 with subsequent amendments) states that the body conducting the criminal proceedings is under obligation to instruct participants of the proceedings about their rights and duties. Failing to do so or misinstructing them shall not result in any adverse consequences during the course of the trial to the participant of the proceedings or other persons concerned. The Article 16 § 2 CCP states that in addition, the body conducting the proceedings shall, if necessary, inform the participants of the proceedings about their rights and duties, even in cases when this not explicitly stipulated by law. If the aforementioned body fails to provide such advice, and in the light of the circumstances this was deemed indispensable, or if the body misinstructs the participants the provisions of § 1 shall be applied accordingly. Obviously, particular aspects of the above-mentioned principle are regulated in many other provisions of the Code of Criminal Proceedings. In order to implement the directive 2012/13/UE (among others),

	the act of 27th of September 2013 amending the Code of Criminal Proceedings (generally being in force from the 1st of July, 2015) was passed. The Polish law-maker has developed the catalogue of instructions addressed to detainees, suspects or accused persons (including persons under temporary arrest) as well as detainees in order to execute of the European Arrest Warrant. In the context of the right to information on procedural rights, proper amendments of the CCP concern the following articles: 244, 263, 300 and 607l. The Article 244 § 2 CCP states that a detainee shall be promptly informed about the reasons of detention and about his or her rights (including, for instance, the right to access to a lawyer, the right to free interpretation or translation and so on). In turn, the Article 300 CCP states that a suspect shall be instructed about his or her rights before the first questioning. The legal phrase "before the first questioning" means that the body of preparatory proceedings (police, public prosecutor) is obliged to inform (instruct) a suspect about his or her rights after the announcement of the decision on submission of charges (or after the oral announcement of the charges) and before the starting of the first questioning. In practice it is equivalent with the term 'immediately'. In Poland, there are no serious signals that in particular criminal proceedings (in preparatory proceedings) this duty is fulfilled by the competent authorities not promptly, with unjustifiable delay. Although it is not clearly expressed in a concrete Polish regulation concerning criminal proceedings, also a suspect who is temporarily arrested shall be informed immediately about his or her rights. In practice such information appears when a court decides to apply a temporary arrest of a suspect (an accused). (It's worthy to remark that the Article 156 § 5a CCP states that in a situation of lodging a motion for the application or extension of the temporary arrest, a suspect and his or her defence lawyer shall promptly obtain the materials of criminal case in a part containing evidences indicated in the motion. So, it suggests that the information on this right (which is at the same time the duty of the competent authority) also shall be passed promptly (before the obtaining by a suspect the appropriate materials of the criminal case). According to the Article 175 § 1 CCP and the Article 386 § 1 CCP an accused person shall be instructed about the right to depose, about the right of refusal to depose as well as about the right of refusal to answer the questions. The regulation of the Article 386 § 1 CCP indicates a time in which such instruction ought to be made in the following words: 'after presentation of the charges'. Such phrase also suggests immediacy. (Moreover, an accused person is instructed about other rights he or she may exercise not only during the court's activities of the main trial, but also before the main trial).
Portugal	The situation covering national law and the national practice regarding the time when is provided the right to information on procedural rights, is in general, promptly. This right of information was provided before the Directive.
Romania	
Slovakia	Suspects and accused are promptly provided with information.
Slovenia	The information on procedural rights is given promptly to a suspect from the first hearing by the police.
Spain	Unless the procedures were secret (ex parte), the information should be provided immediately.
Sweden	When a person is made aware by the investigative authority that he or she is suspected of a criminal offence, that person shall also be informed on the procedural rights. The information may be provided either orally or in writing. Usually, the information is provided to the suspected person orally directly before the first interrogation. It is the leader of the interrogation that should make sure that the suspected person understands the information, taking into account any particular needs of the suspect.
The Netherlands	Based on the wording of article 27 c Netherlands Code of Criminal Procedure (NCCP) a number of notifi-cations should be made to the suspect. Firstly, when arrested he should be informed what he is suspect-ed of. Prior to his first interrogation a suspect who is not arrested should be informed about: what he is suspected of; his right to remain silent; his right of legal assistance; right of an interpreter and of documents showed to him and statements read to him being translated (in case he does not speak Dutch properly). The suspect, who is not arrested, should be informed in writing, prior to the first interrogation, about:

	what he is suspected of; his right to remain silent; his right of legal assistance; his right of an interpreter and of documents showed to him and statements read to him being translated (in case he does not speak Dutch properly); his right of access to the file; the term within he should be brought before the examining judge; the opportunities to request the pre-trial detention to be lifted or suspended; other rights that have been appointed by governmental decree. Some of the rights that the suspect should be notified of are laid down in the Notification of Rights in Criminal Proceedings Decree. As far as the nature of the rights that should be notified national law seem to comply with the Directive. However, the execution of these rights in practice is intractable. The question is whether these rights are notified in practice indeed and how that has been done. Sometimes, it appears that the rights are only explained in a very concise way. Sometimes, it appears the suspect is not informed at all or only partly. Further, not all suspects are informed in writing. The problem seems to be that though notification of rights is mandatory, its execution is not sufficiently recorded. Whether the implemented notification is actually executed depends on case-by-case factors.
UK	**<u>England and Wales</u>** The Right to Information Directive has been implemented in the UK by amendments to the Codes of Practice issued under s.66 of the Police and Criminal Evidence Act 1984. In particular, amendments were made to Codes C (for the Detention, Treatment and Questioning of Persons by Police Officers) and H (for the Detention, Treatment and Questioning of Persons by Police Officers under the Terrorism Act 2000) applicable as from 2 June 2014. References in this questionnaire to provisions refer to paragraphs in Codes C and H; where the references are different across the codes, 'C' indicates Code C and 'H' indicates Code H. In relation to the right to information on procedural rights, Codes C and H provide: (i) A detainee's solicitor and, if applicable, his appropriate adult where the detainee is a juvenile or mentally disordered/vulnerable, have the right to inspect the whole of the detainee's custody record as soon as practicable after their arrival at the police station and at any other time on request. The custody record must include information about the circumstances and reasons for the detainee's arrest including in respect of any further offences for which he is arrested whilst in custody; and the grounds for each authorisation to keep the detainee in custody. [C§2.4; H§2.5] (ii) On arrival at a police station after arrest or after arrest at the police station following voluntarily attendance, the detainee must be told orally of his procedural rights, namely the right to private consultation with a solicitor; the availability of free and independent legal advice; the right to have someone informed of their arrest; the right to consult the Codes of practice; the right to interpretation and translation if applicable. The detainee must also be told of his right to be informed about the offence(s) and the reasons for arrest and detention. [§3.1] The detainee must also be provided with a written notice setting out these rights as well as their right to remain silent, the arrangements for obtaining legal advice and the circumstances in which an appropriate adult should be made available to assist the detainee. [§3.2(a)] The written notice should be provided in an easy read illustrated version if available. [§3.3A] A copy of that notice should be provided to the appropriate adult (if applicable). (iii) Suspects who are not arrested but are cautioned must be informed orally at the same time as they are cautioned of their right to obtain free and independent legal advice if they choose to remain at the police station. A written notice setting out their procedural rights and the arrangements for obtaining free and independent legal advice must also be provided. [C§3.21(b)] Where such persons are interviewed, the interviewer must inform the suspect orally of the offence and the grounds and reasons for their suspicion. The interviewer must also inform the suspect of his right to interpretation or translation. [C§3.21] Code H in relation to terrorism suspects has no equivalent provision for persons who are not detained. Note 1A broadly provides that whilst certain sections of Code H apply specifically

	to people in custody, those voluntarily present to assist with an investigation should be treated with no less consideration. It goes on to provide by way of example offering refreshments at appropriate times and informing of their absolute right to obtain legal advice or communicate with anyone outside the police station. The right to remain silent is conveyed to individuals by means of a caution. A caution must be given at the point of arrest and prior to any questions being put about the offence the person is suspected to have committed. [§10.1]
	Scotland Introduction By way of background, the directive on the right to information in criminal proceedings was implemented in Scotland (in part) by the Right to Information (Suspects and Accused Persons) Scotland Regulations 2014, which came into force on 6 June 2014. The Regulations apply to persons in police custody – that is to say, persons detained under s14 of the Criminal Procedure (Scotland) Act 1995 on suspicion of having committed an offence who have been taken to a police station, and persons arrested and in police custody (reg 2). The questions posed in this questionnaire distinguish between the situation where a person is not deprived of liberty, and where he is deprived of his liberty. For present purposes, this is not a relevant distinction in Scotland: all suspects are detained, and for the period of their detention, they are deprived of their liberty. They may well be released by the police following questioning (indeed they may be released without charge) but during the period of their detention they are considered to be in police custody (see reg 2 of the 2014 Regulations). Where detention is followed by arrest, or where arrest takes place without having been preceded by detention, deprivation of liberty follows. I cannot envisage a situation where a person is detained or arrested without a period – however temporary – of deprivation of liberty. A person's Article 3 and 4 rights will be engaged from the moment of detention or arrest. * The 2014 Regulations provide that a person in police custody must be provided with the information necessary to satisfy Articles 3 and 4 of the Directive "as soon as reasonably practicable". The information can be provided verbally or in writing. A constable must record the time at which the information is provided and the identity of the person who provides the information. (Reg 3)
	Northern Ireland Yes – Before Interview (i) Not deprived of liberty – interviews can be conducted voluntarily under the Police Criminal Evidence (NI) Order 1989 Section 10 referred to as PACE 10 without arrest or detention.

a. *at which stage it is provided?*	
Austria	As pointed out, the suspect must be informed as soon as possible, i.e. from the very beginning of the procedure against him. The information must be given by the police or the prosecutor.
Belgium	See answer under a)
Bulgaria	In answering this question, a peculiarity of the Bulgarian legal system is to be borne in mind. The official bringing of a criminal charge is done in accordance with the rules of the Code of Criminal Procedure (CPC), that is in the course of already initiated pre-trial proceedings and if sufficient evidence that a given person has committed a criminal offence has been collected. "Official bringing of a criminal charge" means that the investigating organ is to inform the respective person that she/he is accused of a concrete criminal offence or offences. The act of bringing the charge must contain *an exhaustive enumeration of all the procedural rights of the accused person, including those pointed out by Article 3.1 of the Directive.* This act is done in writing and must be promptly submitted to and undersigned by the accused person. From this moment on that person acquires the procedural position of "an accused person" in the meaning of both CPC and the Directive. In this case, the right to information on the procedural rights is provided in full compliance with the Directive as far as the stage of proceedings is concerned, that is in the pre-trial stage and at the first moment the relevant person acquires the procedural position of an "accused person". The peculiarity relates to the cases of arrest by the police. Arrests by the police are regulated not by CPC but by the Ministry of Interior Act (MIA), which in my country is considered an organizational rather than a procedural piece of legislation. In compliance with MIA the police may arrest a person on various grounds one of them being the case where there is sufficient *information (but not evidence in the meaning of CPC – **N. B.!**)* that this person has committed a criminal offence. Since the national law does not provide for the procedural figure of "a suspect", there are still enough reasons to define the person arrested by the police on the suspicion of having committed a criminal offence as a "factual suspect", therefore a person falling within the scope of the Directive. The arrest by the police is ordered in writing by an administrative order delivered by a police officer especially authorized by law to deliver such orders. The arrest order is to be promptly submitted to the arrested person, who has to verify by signing the act of submission. The arrest order must contain, *inter alia*, data about the rights of the detainee. Therefore, in the case of an arrest by the police of a factual suspect the right to information on the procedural rights is also provided in compliance with the Directive as far as the stage of proceedings is concerned. The stage here is the first contact with the police. Detention by the police may not last longer than 24 hours. If in this period no official charge is brought under the rules of CPC (please see above), the detainee is to be released.
Croatia	See the previous answer. According to the Article 239, paragraph 2 of the CPA, the list of rights shall be provided to the suspect or accused person with the search warrant/ subpoena for the first interogation/ decision on conducting the investigation/ subpoena for the evidentiary hearing/ information on conducting investigation actions/ decision on custody/ warrant for recognition/ warrant for the expertise of the suspect or accused person.
Cyprus	According to Rule II of the Judge's Rules "As soon as the police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned, before putting to him any question, or further questions, relating to that offence".
Czech Republic	See the previous answer. In practice the accused or suspect are informed by the law enforcement authorities before every legal act, e. g. before police questioning, again before the questioning during the hearing. The new implementing legislation added into the Section 2(13) CCP that the information has to be provided "in an appropriate way and comprehensively".

	When a defence lawyer is present, it practically works (indeed some policemen and judges speak rather quickly, others provide the information in a more comprehensive way). There is a difference between the pre-trial stage and the trial stage. In the pre-trial stage when a record about every legal act is made by the authority, which carries it out, and signed by the person concerned, the suspect or accused is informed of his rights both orally and in written. The oral information is only summarizing the basic rights (the oral information is provided less formally and in more comprehensive way to the juvenile offenders); the written information, which is a part of the record from the Police act, is on the other hand very detailed and long and covers not only the rights listed above but also other defence rights. However, this written information contained in Police´s records, is still drafted (there was no change resulting from the implementation of the Directive) in small letters, in italics and it copies the formal wording of the provisions of CCP, thus make it difficult to understand for an ordinary person. In the trial stage, before the defendant is questioned during the court hearing, he is orally informed of his basic rights by the judge; this information is in practice more basic than information form the police officer at the pre-trial stage.
Estonia	The suspect is informed about his/her rights at the beginning of the first procedural act (usually, an interview) he/she is subjected to. This information is repeated on each occasion the suspect is interviewed or subjected to other procedural acts throughout the criminal proceedings.
Finland	As told above, usually the information is provided only moments prior to starting the interrogation. This timing may be an issue, since the suspect may not in a short time period fully understand his rights. If the suspect is called to the interrogation by letter, the “comprised letter of rights” is usually sent at the same time to the suspect.
France	Either on the writ of summon or at the first stage un the police station.
Germany	
Greece	Information on the rights is usually provided during the first testimony of the defendant before the competent authorities.
Hungary	See above.
Ireland	Where the case is being dealt with in the District Court the material will be provided before the scheduled hearing. When the case is being returned for trial to a higher Court it will usually be when the case is in the listing system of the higher Court that disclosure will be provided. The book of documents will have been provided in the District Court. The advice on retaining legal representation and availing of free legal aid will be given on the first appearance in Court. If an accused person does not seek to avail of the right at that stage they can seek to make the application at any later stage and will frequently be advised by judges that given the developments in the case their situation is such that they should give more serious consideration to having a representation.
Italy	See above the answer at question a) (usually during investigations or soon after the completion of the investigative stage.
Latvia	When the person has acquired the right to defence.
Lithuania	The information about the procedural rights is being provided to the suspect at the pre-trial investigation stage before his/her first questioning (see the answer (a)). The information on procedural rights is being provided to the accused at the very beginning of the court hearing.
Luxembourg	At the pre-trial stage as well during police hearings than during interrogations made by investigating judge.
Malta	The moment the ‘deprivation of liberty’ is signalled (Date, Place and Time Recorded) the individual is cautioned by the senior police official (in the presence of other police Officials) as to his right to speak to a lawyer and right to remain silent.
Poland	As it was mentioned above, due to the Article 300 § 1 CCP the right of a suspect to get information on procedural rights is provided him or her at the stage of preparatory proceedings after the announcement of the decision on submission of charges (or after the oral announcement of the charges) and before the starting of the first questioning as a suspect. According to the Article 244 § 2 CCP a detainee who is not formally a suspect in the ongoing preparatory proceedings (but he or she is recognized as a

	suspected person or more precisely – a potentially suspected person) shall be promptly informed also about his or her rights (inter alia about his or her right of access to a lawyer). A suspect (an accused) temporarily arrested shall be instructed about his or her rights when a court decides to apply a temporary arrest in case of a concrete suspect or accused. It means that in practice such information shall appear quickly (and in fact it is so).
Portugal	It is provided from the time persons are made aware by the competent authorities that they are suspected or accused, until the conclusion of the proceedings, and the resolution of any appeal (in all stages).
Romania	
Slovakia	In pre-trial period, If the person is suspected, the authorities acting in criminal proceeding have to communicate him his personal rights before first questioning. The accused is provided with information upon delivery of notification of charges.
Slovenia	At the first police questioning as soon as persons are made aware by the police that they are suspected or accused of having committed a criminal offence.
Spain	At any stage, from the very beginning.
Sweden	See the answer under (a) above.
The Netherlands	See (a) above.
UK	**England and Wales** See answer to (a) above.
	Scotland Information is provided at the time of detention or arrest. Where detention or arrest take place outwith a police station, the suspect/arrested person is advised of the nature of the offence which they are suspected of having committed/in respect of which they have been arrested, and cautioned that they need not say anything but anything they do say will be noted and may be used in evidence. They would ordinarily then be removed to a police station for "processing", where all official documentation is completed.
	Northern Ireland **(**a). Written notice of the right to access to a Lawyer. The items on which information is provided (i.e. all the rights listed above.) (b) The right to remain silent and the nature of the accusation will be provided orally prior to the interview –copy of the PACE 10 sheets attached for assistance (c) & (e) before any interview is conducted the person will be cautioned as per Article 3 of PACE and also told the offence to be investigated. Caution states "you do not have to say anything, but I must caution you that if you do not mention when questioned something which you alter relay on in court it may harm your defence. If you do say anything it may be given in evidence" Deprived of Liberty- Material setting out your rights after detention are provided at the time of authorisation of detention – person arrested, brought to a custody suite. At that time the Custody Sergeant (who is police officer with responsibility for the wellbeing and care of persons in custody) must make a decision as to whether the detention can be lawfully authorised – usually to secure and preserve evidence by way of questioning and carry out searches of suspects addresses or property of individuals. Copy of these notices attached. The arresting officer will normally have to outline the general circumstances in relation to the reason for arrest and the nature of the offence in the presence of the Custody Sergeant and the detained person and this will be recorded on the Custody Record. The detained person is also given the opportunity at that stage to make representations with regard to the circumstances being outlined by the arresting officer. These will also be recorded on the Custody Record. If detention is authorised the suspect is given a written notice setting out their rights. A copy of this notice is attached for assistance.

(c) the items on which information is provided (i.e. all the rights listed above)?	
Austria	The list is fully covered. In practice, the suspect is given a form listing all the rights he must be informed about.
Belgium	the right of access to a lawyer; YES any entitlement to free legal advice and the conditions for obtaining such advice: YES the right to be informed of the accusation: YES the right to interpretation and translation: YES the right to remain silent : YES
Bulgaria	In the case of bringing a charge under the rules of CPC (please see the answer to Question 1 (b) above) the investigating organ has the procedural obligation to inform promptly the accused person of *all her/his procedural rights, which include the items listed in Article 3.1 of the Directive*. In this respect, Bulgarian law and practice fully comply with the requirements of the Directive. The situation is different as far as arrests by the police are concerned. As it was pointed out above, this is the first contact of the factual suspect with the police. Practically in each case of an arrest by the police, the so-called "informal conversations" between the police representatives and the suspects take place. These "conversations" have nothing to do with the official interrogations of the accused persons, which promptly follow the bringing of charges under the rules of CPC when the accused persons have already been officially informed about their right to remain silent. These conversations are founded on no legal provisions whatsoever but, as already noted, they are common practice. It is beyond any doubt that the information shared by the suspect in the course of these "conversations" has no evidential value because this information is not obtained in compliance with the strict procedural rules of CPC. However, this information is very often recorded (either by audio or by video) and later reproduced before the court during the trial stage of proceedings, or the police officers who have carried out the "conversations" are later summoned as witnesses to testify before the court on the information they had obtained from the suspect during the "conversation", especially when this information contains confessions in some form or another. The matter is that in practice a considerable number of Bulgarian courts are inclined to accept these recordings or the testimony of the police officers as valid pieces of evidence, thus practically circumventing the right of the accused person to remain silent and not to cooperate with the investigating organs. Now getting back to the requirements of the Directive, I have to note that the police arrest order should correspond to a number of requirements of MIA concerning its contents. The order must contain, *inter alia*, information about the rights of the detainee. I shall come back to this point further on when discussing the Letter of Rights of the detainees. Here it should be noted that the obligatory requisites of the police arrest order include *no right* of the detainee to remain silent and respectively no right to information thereof. From a formal point of view, this could be explained by the fact that the "conversations" with the police representatives are not envisaged by the law. But, from the viewpoint that the arrest of a factual suspect is her/his first contact with the police and taking into account the commonly existing practice of the police to carry out "conversations" with the suspects, which later could be used as evidence before the court, the situation in my country regarding the first contact of the factual suspect with the police is obviously in a serious incompliance with the requirement of the Directive that the suspect has to have a right to remain silent promptly secured and to be promptly informed about this right. This is so because in my view it could be held that the requirement set forth by Article 3.1 (e) of the Directive affects ***all*** suspects and accused persons, no matter whether they are deprived of their liberty or not. Concerning this flaw, Bulgarian law has to be amended in accordance with the Directive and national practice has to be respectively changed. This means that the right to remain silent has to be secured by law to those arrested by the police on the suspicion that they have committed a criminal offence because of the informal "conversations" with them that usually follow the arrest. These suspects are also promptly to be informed of this right by the police.
Croatia	The list of rights provides the information on all the rights listed in this Directive, according to the Article 239 of the CPA.
Cyprus	The suspect is informed only about the right to be informed of the accusation, the right to interpretation and translation and the right to remain silent.

	See answer in 1 (a) as far as complaints against the Police for not implementing the said legislation
Czech Republic	See the previous answer.
Estonia	The suspect is informed about the following rights (§ 34(1) of CCP) -- A suspect has the right to: 1) know the content of the suspicion and give or refuse to give testimony with regard to the content of the suspicion; 2) know that his or her testimony may be used in order to bring charges against him or her; 21) the assistance of an interpreter or translator; 3) the assistance of a counsel; 4) confer with the counsel without the presence of other persons; 5) be interrogated and participate in confrontation, comparison of testimony to circumstances and presentation for identification in the presence of a counsel; 6) participate in the hearing of an application for an arrest warrant in court; 7) submit evidence; 8) submit requests and complaints; 9) examine the minutes of procedural acts and give statements on the conditions, course, results and minutes of the procedural acts, whereas such statements are recorded in the minutes; 10) give consent to the application of settlement proceedings, participate in the negotiations for settlement proceedings, make proposals concerning the type and term of punishment and enter or decline to enter into an agreement concerning settlement proceedings. The above list covers all the elements required by the Directive.
Finland	All information is in principle provided, the major problem being the right to remain silent, which is described above. The good practice in Finland is that the suspect is informed of his right to a lawyer of his/her choosing.
France	See above.
Germany	
Greece	The provided information include, in accordance with the current legislation and in particular with Article 99A of the Greek Code of Criminal Proceedings, as inserted by Law 4236/2014 and national practice, all procedural rights, namely: 1. the right of access to a lawyer, 2. the right and the conditions for providing free legal advice, 3. the right to information about the charge, 4. the right to interpretation and translation and 5. the right to silence. Information in practice is granted for each of the listed rights. But it is very comprehensive and it has been observed that sometimes, at the stage of police preliminary investigation, it's not guaranteed, whether the authorities have adequately explained the content of the rights to the arrested person.
Hungary	All the rights listed above.
Ireland	Information given by a Court deals with the right of access to a lawyer, the entitlement to free legal advice, the right to interpretation and translation. It will address the provision of details of the accusation. The right to remain silent is not typically addressed.
Italy	Yes, the jurisprudence, nevertheless, hold that for the validity of the proceeding is enough the delivering of the letter, even if some of the listed information (i.e. the right to interpretation)are not given.
Latvia	All the rights listed above
Lithuania	Information is provided on all the rights listed above.
Luxembourg	No. The right on legal assistance is rarely communicated. Mainly the right to see a doctor and a lawyer is communicated as well as the right no to participate in your own incrimination.

	Are also communicated the right to keep silent, or the right to make declarations, and the right to enter in relation with consular authorities (for foreigners). In case a foreign person is heard by the police, or interrogated by an investigating judge, a translator is present who then translates the information concerning the communication of rights in the national language of the person put under proceedings.
Malta	As above
Poland	The Article 244 § 2 CCP indicates that a detainee shall be informed about the reasons of detention as well as about his or her rights like: the right of access to a lawyer, the right to free assistance of interpreter or translator (if a detainee doesn't speak Polish language in a sufficient degree), the right to make a statement or the right of refusal to make a statement, the right to obtain a copy of the minutes of detention, the right of access to the urgent medical assistance, the right to the prompt and direct contact with a lawyer, the right to challenge the detention, the right to have a contact with consular authorities or diplomatic representation. A detainee shall be also informed about the maximum number of hours he or she may be deprived of liberty before being brought before the judicial authority. In turn, the Article 300 § 1 CCP present the catalogue of the following rights of a suspect (about which a suspect shall be instructed before the first questioning): - the right to depose; - the right of refusal to depose; - the right of refusal to answer questions; - the right to information on charges and their changes; - the right to submit motions for activities or investigation or inquiry; - the right of access to a lawyer (including the right to free assistance of a lawyer under conditions for obtaining such assistance); - the right to become familiar with the final files of the preparatory proceedings; - the right to mediation in criminal cases; - the right to free assistance of an interpreter or a translator; - the right to be questioned with the assistance of a suspect's lawyer. A suspect shall be instructed not only about rights, but also about his or her duties and certain legal consequences. All rights listed in the Article 3 of the directive 2012/13/EU are contained in the Article 300 § 1 of the Polish Code of Criminal Proceedings. A person temporarily arrested – in the light of the Article 263 § 8 CCP – has the following rights: - the right to depose; - the right of refusal to depose; - the right of refusal to answer question; - the right to information on charges; - the right to review files of the criminal proceedings in a part containing evidences indicated in a motion for applying a temporary arrest; - the right of access to the first (urgent) medical assistance; - the right to free assistance of an interpreter or a translator; - the right of access to a public defender - the right to have a contact with consular authorities or diplomatic representation and some other rights. An accused person – according to the Article 386 § 1 CCP (in relation with the Article 175 § 1 CCP) - is instructed, after presentation of charges, about: - the right to depose; - the right of refusal to depose; - the right of refusal to answer questions. An accused person - according to the Article 338 § 1a CCP - is instructed, before the presentation of charges, about the contents of some procedural regulations, among others about the Article 80a CCP (which presents the right of access to a public defender). During the proceedings before the court an accused is instructed about other his or her particular procedural rights, too.
Portugal	The information provided includes all the rights listed above, except the right to interpretation and translation.
Romania	

Slovakia	According to Sec 34 para 4 CCP, the bodies involved in criminal proceedings and the court shall at any moment be obliged to instruct the accused of his rights, including the advantage of pleading guilty, and give him a possibility to fully exercise his rights. The following information is provided: - The right of access to a lawyer, the right to remain silent and entitlement to free legal advice: Sec 121 para2 CCP - before examining the accused he shall be advised of the following: "As accused you have the right to give a testimony or to refuse to do so. No-one will force you to confess. You have the right to elect and consult a lawyer. If you cannot afford a defence counsel, you have the right to ask to have a defence counsel assigned. You have the right to have your defence counsel present during your interrogation and to remain silent in his absence." - Information on conditions for obtaining legal advice - Questioned person is entitled to legal aid of defence counsel. If the accused has not sufficient means to afford a lawyer, judge would assign a counsel either in pre-trial or trial stage. Free legal assistance, however, is not always provided. The accused who cannot afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee. If the accused has no counsel in a case where the counsel is mandatory, he shall be given a time limit to elect one. If he fails to elect a counsel within this time limit, he shall be promptly assigned a counsel by the judge, during the period in which the grounds for mandatory defence apply. Court appoints defence counsel from a list of attorneys of Slovak Bar Association. The assigned counsel shall have to accept the appointment. The accused may elect other lawyer than the one who was assigned. - Right to interpretation and translation - the suspect or accused have the right to interpretation/translation once they declare that they do not understand the language of the proceeding (Sec 20 and sec 28 CCP) - Right to be informed of the accusation - According to Sec 34 CCP, the accused, from the commencement of the proceedings held against him, shall have the right to give his opinion on any allegation of his guilt and the supporting evidence without, however, having the obligation to testify. Charges have to be presented in written form and the suspect – already accused has a right to receive copy of charges. If there are grounds for changing or admitting charges the police has to notify in written. There is no time-limitation for filing a charge against the suspect. It is usually the competence of the police to present a charge in pre-trial stage but such a decision can be questioned before the prosecutor. Suspect should be advised about the consequences of libel.
Slovenia	The information is provided for all the rights listed.
Spain	The information covers all rights of the accused, suspect or detainee. In addition, information is provided on the possibility, upon request by the accused or detained person, of being examined by the public health care services in order to have a written report issued by a doctor.
Sweden	According to Swedish law, the information shall not only contain all the rights set out in Article 3 of the Directive but also the right to be informed continuously of developments in the investigation (see Question 4 (a)-(b) below) and the right to be informed about any changes of the suspicion (see Question 3 (c) below).
The Netherlands	See (a) above.
UK	**<u>England and Wales</u>** See answer to (a) above.
	<u>Scotland</u> All of the rights listed above; (c) and (e) “there and then”; the remaining rights would be explained at the police station.
	<u>Northern Ireland</u>

	(d) the means through which it is provided (e.g. orally or in writing, in suitable language, the needs of the vulnerable included)?
Austria	The suspect is informed (usually in writing) and in a language he understands. Even though the law provides that the information must be given not only in a language, but also in a way the suspect understands (§ 50(2) StPO), the suspect understands the information in practice only if he can read and understand a rather complex written information.
Belgium	the right of access to a lawyer; IN WRITING (letter of rights – Royal Decree of 16/12/2011) any entitlement to free legal advice and the conditions for obtaining such advice: IDEM the right to be informed of the accusation: IDEM the right to interpretation and translation: IDEM the right to remain silent : IDEM The content of the Belgian letter of rights is of course translated verbally to the suspect who does not understand the language of the proceeding.
Bulgaria	The right to information on procedural rights is always provided in writing in my country. Academicians and practitioners consider that both national law and practice guarantee that the information is given in a suitable language, when needed, and taking into account the needs of vulnerable people. I share this view.
Croatia	The list of rights is provided in writing. Information is given in the suitable language (if the suspect or accused person is a foreigner, than it his own language), which includes the needs of the vulnerable persons. Before conducting legal actions, the suspect or accused person is questioned whether he received the list of rights, and if so, whether he understood it. If the accused person or suspect didn't receive the list of rights, he will be promptly provided with one and no actions will be conducted before suspect or accused person is provided with one.
Cyprus	According to the Judge's Rules the caution is made orally and in writing if the suspect or accused wishes to give a written statement. In the written statement it is written by the investigating officer the nature of the crime he is investigating against the suspect or accused and the right to silent which is signed by the suspect or accused. If the suspect or accused refuses to sign it then the senior police officer present, records on the statement itself and in the presence of the suspect or accused making it, what has happened. In the case of a foreigner making a statement in his native language: (a) The interpreter should take down the statement in the language in which it is made. (b)An official English translation should be made in due course and be proved as an exhibit with the original statement. (c) The foreigner should sign the statement at (a). Interrogation of children and young persons As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian or in their absence some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school this should be done only with the consent, and in the presence of the head teacher or his nominee.
Czech Republic	See the answer (b).
Estonia	According to § 351(1) of CCP, the information shall be provided orally or in writing in plain and intelligible language. In practice, usually the information is submitted to the suspect on paper and the suspect is asked to read the text (which is copy-paste of the relevant provision cited above) and to confirm by his/her signature that they have read and understood the rights. Oral explanation is rare, and it is done only when the suspect explicitly asks for clarification. There is no provision which requires the authorities to take the needs of vulnerable persons into account.

	In my view, the general practice of submitting the text of the relevant paragraph of the law for reading cannot be considered as fully compliant with the meaning of Article 3(2) of the Directive -- the language is hardly simple and accessible.
Finland	As stated above, the information is provided in writing, in case it's not a question of simplified investigation. It is also provided in suitable language with the possible exception of the right to remain silent. In case of more unusual languages it is possible that the information is not provided in writing but given orally via an interpreter. According to information obtained from the police, the letter is available in 10 languages. The needs of vulnerable are not taken into account specifically enough at least in legislation. The Criminal Investigation Act contains provisions regarding treatment of suspects under the age of 18, but otherwise the needs of vulnerable suspects are, according to the Government Bill implementing the Directive, to be taken into account in training the investigative authorities.
France	By writing during the police interview.
Germany	
Greece	The information of these rights shall be provided, in accordance with applicable legislation and in particular with Article 99A par. 2 of the Greek Code of Criminal Proceedings, as inserted by Law 4236/2014 and national practice, in simple and accessible language, orally or in writing, taking into account the special needs of suspected or accused persons who are vulnerable. The rights in practice are communicated orally in the Greek language. If there is a foreigner, an interpreter is called for translation. There is not always an interpreter for specific language cases.
Hungary	Such information is made in his/her mother tongue, since they are official information when an interpreter is always present.
Ireland	In a non-custody situation the information is always provided orally by the judge in the Court in the first instance. The judge having directed the prosecution to provide either a précis or the statements of evidence they will subsequently be provided in writing to the defence.
Italy	In writing or if given orally, a minute and description of the information has to be written and signed also by of the accused person.
Latvia	It is issued in writing and, where necessary, explained to him or her. All information is given in a language that he or she understands.
Lithuania	See the answer (b). If the suspect or the accused person does not speak and understand the Lithuanian language, the information on all procedural rights is being translated into the suitable language.
Luxembourg	The information is provided orally and the written traces of the notification of information is contained or in the PV au audition by the police or in the PV of audition by the investigating judge. No separate bill of rights is given formerly to any investigating act to the person put under procedure, which is in the eyes of undersigning contrary to the directive, which is still NOT implemented in national law till date.
Malta	Orally and in writing
Poland	The Article 244 § 2 CCP concerning the right to information of a detainee (a suspected person as well as potentially suspected person) doesn't precise the form of such information. Such information can be provided orally but also in writing and both of these forms can be found in practice. However, the most appropriate form of such information is a form in writing, by handing over a detainee a sheet of paper (a letter of rights) containing excerpts from the proper provisions (with marking of the numbers of articles of the Code of Criminal Proceedings where such provisions are placed). It should be noted that as the result of implementation of the directive 2012/13/EU there appeared a new provision in Polish CCP, added by the act of the 27th of September, 2013 amending the Code of Criminal Proceedings (Journal of Laws of 2013, item 1247). This provision is the Article 244 § 5. It states about the competence of the Minister of Justice who is empowered to introduce in the ordinance a model letter of rights with information provided to a detainee. The mentioned model letter of rights shall include information especially on such rights of a detainee like: the right to free assistance of the interpreter or translator, the right to make a statement or to refuse of making a statement regarding a subject of detention, the right to obtain a copy of minutes documenting the detention, the right of access to an urgent medical assistance, the right of access to a lawyer, the right to challenge a decision on detention

	to the court and other procedural rights. The model letter of rights shall also contain the information on the period of detention. It is demanded that the instruction (letter of rights) addressed to a detainee shall be prepared and presented with respect to the necessity of being understood also by persons who aren't represented by lawyers. (In practice this demand generally means that the instruction shall be provided in a suitable, communicative language and it seems that - from this point of view – such instruction shall take into account also the needs of vulnerable persons. Till now the practice hasn't brought critical remarks about the manner of fulfilling of this demand). Nowadays, the binding model letter of rights is included in the appendix to the Ordinance of the Minister of Justice of the 3rd of June, 2015 (Journal of Laws of 2015, item 835). It generally corresponds to the indicative model letter of rights as proposed in the annex I of the directive 2012/13/EU. It is worthy to add that – due to the new § 4 of the Article 607 l CCP (also added by the act of the 27th of September, 2013 amending the Code of Criminal Proceedings) – the Minister of Justice is empowered to introduce in the ordinance the model letter of rights for persons detained on the basis of a European Arrest Warrant. Such letter of rights shall include information on the following rights: the right to be informed about the contents of the European Arrest Warrant on the basis of which a concrete person have been detained, the right of consent for being surrendered to the seeking Member State, the right to make a statement regarding to a subject of being surrendered, the right of access to a lawyer, the right to depose, the right of refusal to depose or to refuse answering questions, the right to become familiar with the files of the proceedings in the scope concerning the grounds of detention, the right of access to the urgent medical assistance, the right to free assistance of an interpreter or a translator and some others rights. It is required that the instruction (letter of rights) addressed to a detainee under a European Arrest Warrant shall be prepared and presented with respect to the necessity of being understood also by persons who aren't represented by defence lawyers. And the remark like one presented above should be made – in practice this requirement meets frequent interpretation that the instruction shall be provided in suitable language and it shall respect the needs of vulnerable persons too. Till now the practice in Poland hasn't brought critical opinions on the manner of fulfilling of this requirement. The aforementioned model letter of rights is contained in the appendix to the Ordinance of the Minister of Justice of the 11th of June, 2015 (Journal of Laws of 2015, item 874) and it respects demands of the indicative model letter of rights for persons detained on the basis of a European Arrest Warrant, as it is given in the annex II of the directive 2012/13/EU. The Article 300 § 1 CCP clearly requires that the instruction for a suspect shall be hand over him or her in writing. By the way, a suspect should confirm by his or her signature that he or she obtained the mentioned instruction. The Article 300 § 2 CCP indicates a competence of the Minister of Justice to issue an ordinance including letter of rights (a written form) of suspects taking into account the necessity that such written instruction shall be understood also by persons who are not assisted by legal representatives (lawyers) - advocates or legal advisors. In practice the demand that the instruction shall be understood by suspects who are not assisted by legal representatives means that it ought to be transparent and written in a simple, clear, accessible language. The practice in Poland hasn't brought critical remarks about the manner of fulfilling this demand yet. At present, a model letter of rights (and – it should be noted – also duties) is indicated in the appendix to the Ordinance of the Minister of Justice of 11th of June, 2015 (Journal of Laws of the 26th of June 2015, item 893). The proposed binding model letter of rights and duties of a suspect in criminal proceedings includes most of the rights indicated in the indicative model letter of rights placed in the annex I of the directive 2012/13/EU. Unfortunately, the model letter of rights and duties proposed in the ordinance of the Minister of Justice issued on the legal grounds of the Article 300 § 4 CCP doesn't include contents on the right that a third person can be informed about suspect's detention or arrest as well as on the right that a suspect who is foreigner might inform his or her consular authority or diplomatic representation about his or her detention or arrest. In the Polish model letter of rights and duties of a suspect in criminal proceedings there are not included contents concerning the suspect's right to the urgent medical assistance and a period of depravation of liberty as well as about the obligation to be released at the end of this period or to be heard by a judge who will decide on the further detention of a suspect. There is also no information that a suspect can ask his or her lawyer or a judge for information about the possibility to challenge the arrest, to review the detention or to ask for provisional release. The instruction for a person (a suspect or an accused) who is temporarily arrested shall be hand over him or her in writing (this conclusion is a result of the interpretation of the Article 300 § 1 CCP). On the grounds of the Article 263 § 8 CCP (also added by the act of the 27th of September, 2013 amending the Code of Criminal Proceedings) – the Minister of Justice is empowered to introduce in the ordinance

	the model letter of rights for persons who are temporarily arrested in criminal proceedings. Such letter of rights shall be prepared in a manner taking into account the necessity to be understood for persons who are not assisted by legal representatives. (In practice it means that the language of the letter of rights should be suitable and communicative). At present, a model letter of rights of a person temporarily arrested in the criminal proceedings is shown in appendix to the Ordinance of the Minister of Justice of the 11th of June, 2015 (Journal of Laws of the 25th of June 2015, item 885). The letter of rights – taking into account its model - shall include information on the following rights: the right to depose, the right of refusal to depose, the right of refusal to answer question; the right of access to a lawyer (even to a public defender), the right to free assistance of an interpreter or a translator, the right to inform a third person about suspect's temporary arrest, the right to inform by a suspect (who is foreigner) his or her consular authority or diplomatic representation about his or her temporary arrest, the right to information on charges (as well as about the supplement of their contents, their modifications and about legal qualification of the crime), the right to review files of the criminal proceedings in a part containing evidences indicated in a motion for applying or extending a temporary arrest, the right to challenge the court's decision concerning the application or extension of the temporary arrest, the right to lodge a motion for revoking the temporary arrest or changing it to another preventive measure in criminal proceedings, the right of access to the urgent medical assistance.
Portugal	It is provided orally and in writing including the needs of the vulnerable.
Romania	
Slovakia	It is provided orally but subsequently recorded in writing (Minutes, official file record). It is cited from the legislation but according to Sec 34 para 4 CCP, if necessary, the information is explained in more detail.
Slovenia	The information shall be provided orally.
Spain	In writing and orally, with special attention to people with difficulties in comprehension. The lawyer is present at that moment.
Sweden	See the answer under (a) above.
The Netherlands	As mentioned above with regard to suspects who are not arrested verbal notification suffices. In case the suspect is detained the notification should take place in writing.
UK	**England and Wales** See answer to (a) above.
	Scotland The offence, and the right to silence, are explained verbally, and are later recorded in detention/arrest forms at the police station. All of the rights of a person deprived of his liberty are set out in a Letter of Rights, provided at the police station. I attach a copy of the full text of the Letter of Rights.
	Northern Ireland C&E notified orally. A, B, C & E notice is read out prior to the interview, copy of this notice given to suspect after interview. D notice displayed in custody suite – at station designated to deal with detained persons, pace 10 interviews often occur in the custody suite. In non-designated station notice displayed in the enquiry office, approx. 20 languages on notice.

	Question 2. ***What is the situation in your Member State – covering both national law and national practice - with respect to the Letter of Rights regarding:*** *(a) the time when it is provided (i.e. promptly)?*
Austria	The information must be given immediately after deprivation of liberty (§ 164(4) StPO).
Belgium	The requested and pertinent information is indeed given via a written declaration of rights (models attached to the Royal Decree of 16 of December 2011), provided promptly and in due time, i.e. as soon as and before a person being arrested will be interrogated. - The Belgian letter of rights – Royal Decree of 16/12/2011 – informs the arrested suspect about : - The right to obtain a brief description of the facts (s)he will be interrogated - The right to remain silent - The right to access a lawyer confidentially before the hearing and to enjoy the assistance of the lawyer during his first questioning during the 24hours of deprivation of liberty - The right to inform a person of trust that (s)he has been arrested - The right for a free medical assistance - The right to enjoy the free assistance of a translator - the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority. The content of the Belgian letter of rights is of course translated verbally to the suspect deprived of liberty who does not understand the language of the proceeding. Regarding time when provided: As soon as and before a person being arrested will be interrogated
Bulgaria	Under the respective rules of MIA, the administrative order imposing police arrest (please see details about the order in the answer to Question 1 (b) above) must explicitly point out certain rights of the arrested person and in this sense, this part of the order may be defined as a Letter of Rights. MIA does not provide for the inclusion of all the items pointed out by Article 4.2 of the Directive in the police arrest order (for details please see the answer to Question 2 (c) below). However, since MIA provides for a prompt submission of a copy of the order to the arrested person, it may be held that the "promptly" requirement of the Directive is satisfied both by law and by practice. For reasons pointed out below in the answer to Question 2 (b), I am not capable to answer whether the "promptly" requirement is fulfilled as regards the cases where pre-trial detention is imposed as a measure to prevent reoffending or absconding from justice.
Croatia	According to the Article 7 of CPA the person deprived of liberty must be provided with the information promptly after deprivation.
Cyprus	Every person arrested by the Police is informed immediately after his/her arrest in a language that he/she understands about his/her rights (see article 3(1), Rights of Persons who are Arrested and Detained Law (Law 163(I)/2005). Additionally, every member of the Police that arrests any person, provides to that person, right after his/her arrest, with a document titled "Rights of Detained Persons", written in a language he/she understands (article 7 (1A)(a). It is also worth noting that according to the Law the arrested person has the opportunity to read the document and has the right to keep it in his/her possession throughout his/her detention (article 7 (1A)(a). When the document is not available in language that the person understands, the person is informed about his/her rights orally, in a language he/she understands. The document is provided to the person subsequently with undue delay in a language he/she understands (article 7 (1A)(c).

	Lastly, in every detention cell the document entitled “Rights of Detained Persons” and “Detention Center Rules” are placed in the Greek, English, Turkish and any other language is considered necessary by the person responsible for the Detention Center. Additionally, the person responsible for the detention center is obliged to inform every detainee, in a language he/she understands as soon as possible about the detention center rules. As regards persons who are arrested on the basis of a European Arrest Warrant (L. 133(I).2004), they are immediately provided with a document titled “Rights for Persons Arrested on the basis of a European Arrest Warrant”, in a simple and understandable language. See answer to Question 1 (a) as far as complaints against the Police for not implementing the said legislation.
Czech Republic	See the answer to the question 1(b). The new implementing legislation states in Section 33(6) CCP that that the letter of rights shall be provided after arrest or detention and shall be provided “without undue delay”. The official written justification of the amendment of the legislation implementing the Directive contains the information that the written letter of rights will be implemented into the internal police regulations (which are not publicly available) and that a special letter of rights form will be prepared for the purpose of the Police. I do not have a personal experience whether suspects or accused persons who are arrested or detained are receiving such written letter of rights, I have experience only with the practice described in the answer to the question 1(b).
Estonia	According to § 351(2) of CCP, a suspect or accused who is detained or taken into custody shall be immediately submitted a written declaration of rights concerning his or her rights in the criminal proceedings.
Finland	According to the Criminal Investigation Act, the information needs to be provided promptly and in a written form in a language that the suspect understands. No specific time frames exist in law. In practice the information and the letter is given when the suspect is brought to the police station after the arrest.
France	The information can be provided if the accused is summoned by the police with a writ of summon. The writ can either mention the information on the date and location of the offence, the legal references, or not if it is not seen as possible according to the investigations. If the accused is arrested, information is not provided as soon as the deprivation of liberty but when the accused arrives at the police station according to article 63-1.
Germany	
Greece	Under current legislation and in particular Article 99A par. 3 of the Greek Code of Criminal Proceedings, as inserted by Law 4236/2014 and practice, this Letter of Rights is provided directly to the accused or suspect who is arrested or detained. In practice this document is not always available immediately.
Hungary	There is no Letter of Rights in the Hungarian criminal procedure, the rights of the suspect/accused is translated by the interpreter.
Ireland	Even prior to the passage of directive 2012/13/EU it was a requirement under the Treatment of Persons in Custody Regulations 1986 that detained persons be provided with a written notice of rights upon their reception at a police station. A copy of the notice of rights currently in use is attached. This notice does not address all the items covered by the directive and is currently being revised.
Italy	Together with the execution of the arrest. In case the arrested person does not appoint a lawyer, police or Prosecutor appoint a duty lawyer, chosen by an electronic random system.
Latvia	Immediately
Lithuania	Letter of rights is being provided to the suspect just before his/her first questioning under the Notification of Suspicion at the pre-trial investigation stage.
Luxembourg	No letter of rights is provided by national authorities.
Malta	As in Answers to Questions 1(a) and 1 (b)

Poland	As it was mentioned above, the Article 244 § 2 CCP concerning the right to information of a detainee (a suspected person as well as potentially suspected person) states that a detainee shall be promptly informed about the reasons of detention and about his or her rights. So, the information on rights is announced (or a letter of rights is handed over a detainee) immediately after detention. According to the Article 300 § 1 CCP stating that a suspect shall be instructed about his or her rights before the first questioning, the written letter of rights shall be handed over a suspect without undue delay. Observations which were made let to make a conclusion that the practice in Poland fulfills this postulate and standard. A suspect (an accused) who is temporarily arrested also shall be informed immediately about his or her rights. It is not clearly expressed by the concrete regulation of the Polish Code of Criminal Proceedings of 1997, but it is interpreted from the normative context concerning the issue of instructions provided to both detainees or suspects. In practice such information appears promptly after a court decided to apply a temporary arrest of a suspect (an accused).
Portugal	Suspects or accused persons who are arrested or detained are provided with the letter of rights immediately.
Romania	
Slovakia	Sec 34 para 5 CCP: Law enforcement authorities shall without undue delay provide the accused who was deprived of liberty with the information of his rights in written form, and it is also noted in the official record (Minutes). The accused has the right to keep it throughout the whole time of his arrest or detention.
Slovenia	The Letter of Rights shall be provided promptly at the arrest or detention.
Spain	Inmediately.
Sweden	When a prosecutor has decided to arrest a suspected person, that person shall be provided with written information on the procedural rights. In addition to the information described under Question 1, the information shall also contain information about the rights referred to in Article 4 (a)–(d) of the Directive. Furthermore, at this stage the suspect shall also be provided with written information on his or her right to access to the information upon which the decision of arrest is based (see Article 7.1 of the Directive). In regards to the requirements set out in Article 4.3 the following shall be clarified. According to Swedish law there is no possibility to challenge the lawfulness of an arrest order. An arrest order is automatically followed by a detention hearing. The detention hearing should not be held later than four days after the suspected person was apprehended or the arrest order was executed (provided that the suspect is still arrested at this point in time). A court decision on detention can be reviewed by a higher court. The Swedish National Police Board has drafted a letter of rights containing the information about the suspected person´s procedural rights. The document has been translated into different languages. According to general guidelines of the Swedish Prosecution Authority the letter of rights shall, in normal conditions, be presented to the suspected person by the police promptly after the arrest order. It can be questioned whether Swedish practice fully meets the requirement of speediness as set out in Article 4.1 of the Directive. As the suspected person is entitled to written information about the procedural rights only when an arrest order has been issued, and as such order in many cases is preceded by an apprehension, situations could occur where a person is deprived of his or her liberty for several hours before he or she is provided with a letter of rights.
The Netherlands	The notification of rights when a suspect is arrested, as referred to in article 4 of the Directive, is implemented in article 27c NCCP. The national legislator has chosen not to prescribe a mandatory format. Therefore, it is not mandatory to use the format referred to in the annex to the Letter of Rights. The national government issued a brochure which has been put on its website. The police officer in charge is responsible for printing the brochure and providing it to the suspect. The brochure has been made in multiple languages and focuses on several target groups such as visually disabled and minors and can be found on https://www.rijksoverheid.nl/onderwerpen/rechtspraak-en-geschiloplossing/documenten/brochures/2014/10/20/mededelingen-van-rechten-aan-de-verdachte. There are some differences between the Directive and the way it goes in practice in The Netherlands: The Directive reads (article 3) that it should be pointed out to the suspect that he has a right of access to a lawyer.

	In The Netherlands the suspect has the right to have a confidential conversation with a lawyer prior to the first interrogation. Thus the extend of participation of the lawyer seems to be more restrictive in The Netherlands. The suspect does not have the right of full access to a lawyer, in the sense that he is informed that he can contact a lawyer at any stage of the proceedings and that he can communicate con-fidentially and in person with his lawyer any time he wishes. He is only informed that he can have a confidential meeting with his lawyer prior to the first interrogation. The suspect has not the explicit right to have another confidential meeting with his lawyer before the next interrogation. In case the suspect is a minor he is entitled to have access to his lawyer at any moment during the proceedings, each interro-gation included. The Directive reads (article 4.2.(b)) that the Member States should see to it that every suspect who is detained has the right to inform a third person that he is detained. The government brochure reads that the suspect is 'entitled to request that a family member or a housemate is informed of the fact that he is detained'. The wording of the brochure does not guarantee that that request indeed is awarded; it might be refused. Further, according to the Directive the person that should be inform about the detention can be any person where the Brochure is limited to family members or housemates. According to the Directive the Member States should safeguard that a suspect who has not the Member State's nationality and who is not a resident of that Member State is entitled to have the consular author-ities of his nationality informed without undue delay about his detention and to communicate with those consular authorities. Here, again, the Dutch brochure seems to restrict this right by only guaranteeing that the suspect has the right to request the consular authorities to be informed. According to the Directive the suspect has the right to urgent medical assistance (article 4.2.(d)). Here, again, the wording of the Dutch brochure is less imperative and , therefore, not sufficiently close to the wording of the Directive: the suspect may inform the police when he feels ill and may ask for a doctor. Pursuant to article 4.3 of the Directive the Letter of Rights should contain basic information about the opportunities to challenge the arrest and the detention or to apply for release. This has been incorporated in the Dutch brochure as follows: "Ask your lawyer or the judge what your possibilities are in case you do not agree with your arrest or with the fact that your detention is extend-ed." In other words: the brochure only refers to the lawyer or the judge without presenting the suspect how he can actually challenge his detention. Such plain referral seems insufficient.
UK	**<u>England and Wales</u>** A written Notice of Rights and Entitlements (NoRE) is given to detainees who have been brought to the police station under arrest or who have attended a police station voluntarily and subsequently been arrested. The items on which the information is provided are: the right of access to a lawyer and entitlement to free independent legal advice [§§3.2(a)(i)-(ii) and 3.1(a)(i)] the right to be informed of the accusation [§§3.2(a)(i) and 3.1(b)] the right to interpretation and translation [§§3.2(a)(i), 3.1(a)(iv), 3.12] the right to remain silent [§3.2(iv)] the right of access to materials of the case including records about their arrest and detention and the offence [§§3.2(a)(iii), 3.4(b), 2.4, 11.1A, 15] the right to have consular authorities and someone else informed [§§3.2(a)(i), 3.1(a)(ii), 3.12A the right of access to medical assistance [§3.2(a)(vii)] the maximum period of detention, release and reviews [§3.2(vi)] the right to have access to materials and documents essential to effectively challenging the lawfulness of their arrest and detention [§§3.2(a)(v), 3.4(b)]. An easy read illustrated version should be provided if available. Currently available NoRE and easy read versions are accessible via the UK Government website. [§3.3A, C Note 3A] The NoRE must be provided in a language the detainee understands. If a translation is not available, the information in the NoRE must be given through an interpreter and a written translation provided without undue delay. [C§3.12(c)-(d); H§3.14(c)-(d)] Audio versions of the NoRE which were available in different languages are no longer in use. A survey of national practice found that the preferred option

	of most police forces was to use telephone interpretation services to assist in explaining the NoRE to detainees with English language difficulties.
	Scotland Regulation 3 of the 2014 Regulations provides that "The person must be provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive."
	Northern Ireland promptly at time of arrest police will advise the offence arrested for. At custody suite when decision re detention is being taken.

(b) at which stage it is provided?	
Austria	As pointed out, immediately after deprivation of liberty.
Belgium	As soon as and before a person being arrested will be interrogated
Bulgaria	According to CPC, together with bringing the charge (please see the answer to Question 1 (b) above), a measure to prevent reoffending or absconding from justice may be imposed. If the measure is to be pre-trial detention on remand, it is to be imposed by the court upon a request by the prosecutor. The law allows the prosecutor to impose detention on the accused person for not more than 72 hours for the sake of the need to bring speedily the accused person to the court, so that the court could resolve in due time the prosecutor's request to impose detention on remand as a measure to prevent reoffending or absconding from justice (we call this type of detention "detention by the prosecutor" in my country). As strange as it may seem and contrary to the conclusions of the analysis of the Bulgarian Ministry of Justice (please see the answer to Question 1 (a) above), Bulgarian law stipulates for the provision of the Letter of Rights only in the cases of police arrests covered by the rules of MIA. The respective rules of the CPC, covering both detentions by the prosecutor and detentions on remand imposed by the court as measures to prevent reoffending or absconding from justice, ***do not utter a single word about providing the accused person(s) with a Letter of Rights.*** Concerning this very serious flaw and notwithstanding the conclusions of the analysis of the Bulgarian Ministry of Justice, Bulgarian law has to be speedily amended in accordance with the requirements of Article 4.1 of the Directive.
Croatia	See the previous answer. Promptly after deprivation of liberty.
Cyprus	See answer in Question 2 (a).
Czech Republic	See the previous answer.
Estonia	The letter of rights shall be submitted at the very beginning of detention. The person is entitled to keep the letter of rights in his/her possession during the whole time the person remains is custody.
Finland	See above.
France	See above
Germany	
Greece	Under current legislation and in particular Article 103 of the Greek Code of Criminal Proceedings, information is given immediately following the verification of the identity of the accused by the competent authorities. It is also permitted in accordance with applicable legislation and in particular with Article 99A par. 3 of the Greek Code of Criminal Proceedings, as inserted by Law 4236/2014 and practice, to suspects or accused to retain this document in their possession throughout the duration of the deprivation of their liberty. But usually this is fulfilled at the stage of the investigation, i.e. when the accused appears before the interrogator for his/her apology. In questioning, particularly when carried out in remote areas, this is difficult to implement.
Hungary	See above.
Ireland	The notice of rights is provided upon reception at the Garda Station. Further information in relation to the investigation is provided during the currency of the detention. The gardai have very broad discretion in relation to what material is disclosed and what is not disclosed. It is often the preference of the police to withhold details from an interviewee in order that the interviewee might commit themselves to a version of events inconsistent with readily established facts. This practice is considered unfair by defence practitioners but is not condemned by the Courts. The situation is most complicated when the police seek to invoke inference provisions whereby adverse inferences can be drawn from the failure of persons to account for certain matters put to them in interview. The relevance of those matters is sometimes not clear without full disclosure of other matters being made.

	This leads to a careful balancing exercise on behalf of the police who wish to get the benefit of the inference while at the same time retaining some of their secrets. The situation is addressed very fully in recent advice provided to members of the police force by their superiors in relation to handling detentions of persons and interviews. The guidance is attached as an appendix to this response.
Italy	In practice, the arrest warrant are issued during the stage of the investigations.
Latvia	When the person has acquired the right to defence.
Lithuania	At the pre-trial investigation stage, just before the first questioning.
Luxembourg	At no stage
Malta	As above
Poland	A suspect in preparatory proceedings receives the letter of rights before the first questioning. It means that it happens after the announcement of the decision on submission of charges (or after the oral announcement of the charges) and before the starting of the first questioning. In practice it is equivalent with the term 'immediately'. In Poland, there are no serious signals that in particular criminal proceedings (in preparatory proceedings) this duty is fulfilled by the competent authorities of criminal proceedings not promptly, with undue delay. Fragmentary practical observations let to make a statement that a suspect (an accused) temporarily arrested receives the letter of rights together with a court decision on applying the temporary arrest.
Portugal	When arrested or detained and presented before a judicial authority.
Romania	
Slovakia	In the pre-trial stage. At the trial is the accused informed about his rights again before the interrogation at the hearing.
Slovenia	At the first police questioning as soon as persons are made aware by the police that they are suspected or accused of having committed a criminal offence and are arrested or detained.
Spain	At any stage.
Sweden	See the answer under (a) above.
The Netherlands	See (a) above.
UK	**England and Wales** See answer to (a) above.
	Scotland When the suspect/accused is being processed at a police station in respect of their detention/arrest.
	Northern Ireland

(c) the items on which information is provided (i.e. all the rights listed above, including the possibility of challenge, review or request)?	
Austria	The list of items is fully covered by Austrian law (§§ 49, 50, 171 and 174 StPO).
Belgium	Yes
Bulgaria	For reasons pointed out in the answers to Question 2 (a) and 2 (b) above I am capable to answer this question only as regards the arrests by the police. As regards the contents of the administrative order imposing police arrest (please see the answer to Question 2 (a) above), the only item missing is the one about the right of access to the materials of the case. This flaw is to be speedily remedied by an appropriate amendment of MIA.
Croatia	The list of rights provides the information on all the rights listed in this Directive, according to the Article 108.a of the CPA.
Cyprus	Every person arrested by the Police is informed right after his/her arrest in a language he/she understands, about: - The reasons of his/her arrest or detention and about the offence that he/she is accused of having committed - The right of access to a lawyer, - The right of free legal aid/assistance and the conditions required of such assistance, - The right of interpretation and translation, - The right to remain silent, - The rights of communicating with a lawyer and or any other persons in order to inform them about the arrest and/or detention, - The place of detention. Additionally, every member of the Police that arrests any person, provides to that person, right after his/her arrest, with a document titled “Rights of Detained Persons”, written in a language he/she understands. According to this document the person is informed about the rights mentioned above and also about: - The right of access to the material of the case, - The right to inform the consular authorities or any other person, - The right of access to urgent medical care, - The maximum time of detention, and - The right to challenge the lawfulness of the arrest and detention. As regards persons who are arrested on the basis of a European Arrest Warrant (L. 133(I).2004), they are provided with a document containing the following rights: -period of deprivation of liberty, -information about the European Arrest Warrant, -assistance of a lawyer, -interpretation and translation, -possibility to consent, -the right to be heard.
Czech Republic	The new implementing legislation does not enumerate which rights shall be included in the letter of rights as it states in Section 33(6) CCP that the accused shall be provided with “written information about his rights”. The rights of the accused are listed in the previous paragraphs of Section 33 CCP and they include all the rights listed in the Directive. The new implementing legislation added into paragraph 5 the information about the right to an urgent medical assistance, about the maximum time for which he can be deprived of liberty before handed over to the court and the right to have informed the consular authority and a family member or another natural person about whom he shall provide data necessary for informing, should he be taken to

	custody. These rights had not been specifically listed in Section 33 CCP before the Directive´s implementation.
Estonia	The letter of rights includes information about the following items: 1) the right of access to a lawyer and legal assistance; 2) the right to information about the suspicion or the indictment; 3) the right to interpretation and translation; 4) the right to remain silent; 5) the right of access to materials; 6) the right to submit evidence; 7) duration of arrest/detention, and the possibilities to challenge detention or obtain the review thereof; 8) the right to inform next of kin and/or consular authorities about the arrest; 9) the right to medical assistance.
Finland	Basically all the information is provided in the letter of rights, with the same comment about the right to remain silent as stated above. Also the suspect is notified about his right to a lawyer of his choosing. There is also other information, like information about the right to correspondence and telephone calls and restrictions to those rights, right to outdoor recreation, right to property etc. One problem in Finland is the right to medical assistance. As pointed out by the CPT in its latest report concerning Finland (http://www.cpt.coe.int/documents/fin/2015-25-inf-eng.pdf), there are several issues relating to this. CPT recommended: In the light of the above, and especially given that police prisons still accommodate remand prisoners (see paragraphs 25 and 26), the CPT recommends that steps be taken to: - improve access to a doctor and in particular specialist (including psychiatric and dental) care, and provide a 24-hour nursing cover at Pasila Police Prison; - improve significantly the access to a doctor and ensure regular presence of a nurse in all the other police prisons visited (Espoo, Imatra, Kuopio, Lahti and Vantaa); - ensure that all newly-arrived detainees (and in particular remand prisoners) are medically screened, within 24 hours of their arrival at a police prison, by a doctor or a qualified nurse reporting to a doctor. Further, the Committee again invites the Finnish authorities to offer regular first-aid refresher courses to all police officers working in detention areas of police prisons.
France	The accused if provided with (article 63-1) : - the legal notification of the custody and its previsible length, - The legal qualification, the date and location of the offence, - The right to prevent a relative and he or her employer and, if he or she is a foreigner, his or her embassy, - The right to be examined by a medical doctor, - The right to be assisted by a lawyer, - The right to present observations to the Prosecutor or the Judge for Detention and Freedom the cease the custody measure, - The right, once the identity has been presented, to make statements, to answer questions or to remain silent. - The right to be provided with an interpreter.
Germany	
Greece	The above document is drawn up pursuant to the provisions of Article 99A par. 4 of the Greek Code of Criminal Proceedings, as inserted by Law 4236/2014 and national practice in a language simple and understandable. Where this is not available in the appropriate language, then the suspect or accused person is informed orally in a language he understands. Subsequently, however, it must be given without undue delay, in a language which the suspect or accused person understands. Information includes all of above rights.
Hungary	All the rights listed above, including the possibility of challenge, but not in writing. In such cases, legal defence in always obligatory which ensures the right to information.

Ireland	In each police station there is a designated policeman who is known as the member in charge. It is their responsibility to ensure that a detained person is aware of their rights including the right of access to a lawyer and the right to interpretation and translation. Interviewing members typically will give a caution about the right to silence. However the right to silence is highly qualified in Irish law given that adverse inferences are permissible. This leads to a most confusing situation from the perspective of a detained person whereby a caution is given to the effect that they have a right to remain silent and that caution is then withdrawn and a separate caution in relation to inferences is given. As a result of a decision of the Irish Supreme Court in 2014 White and Gormley, the Director of Public Prosecutions issued guidance to the police to the effect that any person in detention who is to be questioned has the right to have a solicitor present if they choose. The police routinely advise prisoners of this right but there have been complaints that the advice is often accompanied by the suggestion that this will delay matters or give the impression that the detained person is a serious and career criminal. The government have not put in place a system whereby there will always be the availability of an experienced criminal lawyer to attend police stations when called for. Accordingly while in the main population centres where there is significant competition among legal practices they will always be a ready supply of solicitors available to attend at police stations. The situation is effectively the opposite in more remote areas where there are less lawyers, less competition particularly at unsocial hours etc.
Italy	All the information mentioned in the directive, but not the possibility of challenge, review or request.
Latvia	All the rights listed above
Lithuania	The information is being provided on all the rights listed above but the right on obtaining the review of the detention or making a request for provisional release is not specified in the Letter of rights.
Luxembourg	No Remark concerning the possibility to contact consular authorities this information is given by the investigation judge at the beginning of interrogation. The information concerning the access of the materials of the case is under Luxemburgish law anyway postponed after the first interrogation and this practise is declared in conformity with the European convention by the court (ECHR)in the AT case of 9 April 2015 (sic!) Information concerning the Right of urgent medical is orally provided at the time of arrest. A suspected person may be detained 24 hours before the concerned person sees a judicial authority, namely an investigating judge. This period of 24 hours begins at the moment of arrest by the police authorities. One has meanwhile to know that before an arrested person sees an investigating judge, he/she is brought to prison and incarcerated during the time the police hearing is terminated and the moment the interrogation by the judge begins, and this incarceration takes place without any judicial order emitted by a judicial authority. (!!!) Sometimes the concerned person knows more or less the time his is brought to the judge sometime he doesn't know.
Malta	As above
Poland	In the light of either the Article 244 § 2 and § 5 CCP or the Ordinance of the Minister of Justice of the 3rd of June, 2015 (Journal of Laws of 2015, item 835), the Polish model letter of rights addressed to a detainee (a potentially suspected person) includes information on almost the whole catalogue of rights presented in the directive 2012/13/EU. The Polish model letter of rights (established on the grounds of the mentioned regulations) doesn't contain expressis verbis the right of access to the materials of the

	case. It indicates the right to obtain a copy of minutes documenting the detention but not the right of access to other materials of the case. In the light of the Article 607 l § 4 CCP and the Ordinance of the Minister of Justice of the 11th of June, 2015 (Journal of Laws of 2015, item 874), the Polish model letter of rights for persons detained on the basis of a European Arrest Warrant includes information on all rights indicated within the European Union standard, i.e. in the model letter of rights for persons arrested on the basis of a European Arrest Warrant and presented in the annex II of the directive 2012/13/EU. In turn, in the light of the Article 300 § 1 CCP, the Article 300 § 4 CCP and regulations of the Ordinance of the Minister of Justice of 11th of June, 2015 (Journal of Laws of the 26th of June 2015, item 893), the Polish model letter of rights and duties of a suspect includes information on most rights required and indicated by the directive 2012/13/EU, but – as it was mentioned above – it doesn't include contents on the right to inform a third person about suspect's detention or arrest as well as on the right to inform by a suspect who is a foreigner his or her consular authority or diplomatic representation about his or her detention or arrest. Also, there are not included contents concerning the suspect's right to the urgent medical assistance. It's worthy to add that taking into account the status of a suspect in the light of the Article 300 CCP - in the mentioned model letter there are no specified information on a period of depravation of liberty as well as on the obligation to be released at the end of this period or to be heard by a judge who will decide on the further detention of a suspect. (There is also no information about the possibility to challenge the arrest, to review the detention or to ask for provisional release). On the other hand, in the Polish model letter of rights and duties of a suspect there are contained rights of a suspect which are not mentioned in the directive 2012/13/EU (i.e. the right to mediation in criminal proceedings, the right to apply for restitutive discontinuance of criminal proceedings, the right to apply for a conviction without a trial, the right to apply for a voluntary submission to penalty). Also, in the light of the Article 263 § 8 CCP and the Ordinance of the Minister of Justice of the 11th of June, 2015 (Journal of Laws of the 25th of June, 2015, item 885), the Polish model letter of rights provided to a person (a suspect or an accused) who is temporarily arrested in the criminal proceedings includes information about the whole set of substantial rights reasonably resulting from the directive 2012/13/EU. Taking into account the aforementioned remarks referring to contents of model letters of rights of detainees or suspects, it should be noted that the implementation (in presented scope) of the directive 2012/13/EU in Polish legal system isn't full and sufficient.
Portugal	The information provided is the information set out in (a) to to (e) above in theme 1 and the information set out in (a) above in item (ii).
Romania	
Slovakia	Sec 34 para 4 CCP: The accused who was deprived of liberty must be informed on the right of access to urgent medical assistance, right to access all materials in the file, on the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority, and on the right to have a relative or other person informed. The accused is also informed about the possibility of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.
Slovenia	The information is provided for all the rights listed.
Spain	It depends if we are on police station or in Court premises. In Police Station there are no information about the access to the file, neither the possibility to challenge the arrest. In Court premises there are information about all these rights.
Sweden	See the answer under (a) above.
The Netherlands	See (a) above.
UK	**<u>England and Wales</u>** See answer to (a) above.
	<u>Scotland</u> The following rights are narrated in the Letter of Rights: "Your rights: 1. You have the right to know why the police are keeping you at the police station. 2. You have the right to know what the police think you have done.

	3. You have the right not to speak. You do not have to answer any questions the police ask you. BUT you do have to give your name, address, date of birth, where you were born and your nationality. 4. You have the right to have a lawyer told that you are at the police station. This is free. 5. You have the right to speak to a lawyer in private. You can do this before the police ask you questions. You can also speak to a lawyer at any time when the police are asking you questions. 6. You have the right to have someone else told you are at the police station. This might be a family member, a carer or a friend. 7. If you are under 16 you have the right to be visited by your parent or guardian at the police station. 8. If you are under 18 and subject to a compulsory supervision order you have the right to be visited by your parent or guardian at the police station. 9. You have the right to urgent medical help." The extended text of the Letter of Rights also includes the following relevant information: "If you are not British If you are not British, you can ask the police to contact your High Commission, Embassy or Consulate, to tell them where you are and why you are in the police station. Someone can then visit you in private and arrange for a lawyer to see you. Getting to see paperwork The evidence for and against you will be given to you or your lawyer, if your case goes to court. This will let you or your lawyer prepare your defence. You have the right to a translation of at least the relevant parts of important paperwork if you do not understand English. How long can you be detained for questioning? The police can normally keep you for questioning for up to 12 hours without charging you with an offence. The police can extend this up to a maximum of 24 hours, but only if a Police Inspector agrees to this. You and your lawyer have the right to have your say about this decision, unless you are not well enough. A lawyer can help you with this."
	Northern Ireland

(d) the language in which it is provided (e.g. simple and accessible, understood by the suspect or accused)?	
Austria	In theory, the law provides that the information must be understandable for the suspect. In practice however, the suspect must be able to understand a rather complex legal language. The wording of the "letter of rights" is not so simple that everybody can understand it.
Belgium	Yes
Bulgaria	As regards the language requirements, both in the view of academicians and practitioners in my country and in my view, these requirements are met by the relevant legal rules. Taking into account the answers to the questions that have been given so far, this view holds true only about the Letter of Rights incorporated in the administrative order imposing police arrest.
Croatia	The list of rights needs to be in the language suspect or accused person understands.
Cyprus	The document with the Rights of Detained Persons has been translated in seventeen (17) languages (Filippinos, English, Arabic, Vietnamese, Bulgarian, French, Georgian, Greek, Persian, Chinese, Latvian, Bengali, Polish, Romanian, Russian, Turkish and Srilankan). When the document is not available in language that the person understands, the person is informed about his/her rights orally, in a language he/she understands. The document is provided to the person subsequently without undue delay in a language he/she understands (article 7 (1A)(c), (L.163(I)/2005). As regards the document provided to persons who are arrested on the basis of a European Arrest Warrant (L. 133(I)/2004), this has been translated in ten (10) languages (English, French, Italian, Polish, Dutch, German, Greek, Bulgarian, Romanian and Latvian).
Czech Republic	See answer to the questions 2a and 1b.
Estonia	Generally, the wording of the letter of rights is simpler and better accessible, compared to the copy of the text of law used in non-detention cases. Some improvements could be made, but overall, the wording should be understandable to the suspect or accused. According to § 351(3) of CCP, if the suspect or accused is not proficient in the Estonian language, he or she shall be provided with the declaration of rights in his or her mother tongue or in a language in which he or she is proficient.
Finland	The language should be such that the suspect understands. According to information from the police, the letter of rights is currently available in 15 languages. The Finnish version of the letter is seven (7) pages long and may not be the most understandable already due to its length and several exceptions to rights, which are described in some detail. We can fully endorse those recommendations, as well as the recommendation to see that the persons in police custody have an effective right to be examined, if they so wish, by a doctor of their own choice (on their own expense).
France	In French if the accused understands it;, either on a translated formula or by verbal translation by an interpreter if required. Only the case of accused persons speaking rare languages can lead to certain difficulties.
Germany	
Greece	In Greek law and practice it is ensured that the accused or suspect is informed promptly of any changes to the information provided above. Usually information is provided on all the rights and during questioning.
Hungary	On his/her mother tongue – translated by the interpreter.
Ireland	The written notice of rights is considered to be user-friendly and the normal pattern of interviews will commence with a caution being given and the question being put to the prisoner, recorded on audio-visual tape, as to whether they understand the caution. The fact that the entire interview process is recorded is a significant protection.
Italy	For some information (I.E. access to legal aid) there is a reference to the specific law and sometime it is difficult for the accused to understand if and how be eligible to legal aid.

Latvia	It is issued in writing and, where necessary, explained to him or her. All information is given in a language that he or she understands.
Lithuania	The information is being provided in legal language that is difficult to understand to the suspect. In fact the information on the rights is a copy of a particular article from the CPC that indicates the rights of the suspect. The content of the particular right is not discloses and is not explained to the suspect in simple and accessible manner.
Luxembourg	The language of information is understandable and in case of foreign people the translation is guaranteed.
Malta	Maltese, if not understood, in English
Poland	All legal bases of the Polish Code of Criminal Proceedings of 1997 for model letters of rights provided to detainees or suspects (i.e. Articles 244 § 2 and § 5, 263 § 8, 300 § 4 and 607l § 4) require that such letters (instructions) shall be understood also by persons who are not assisted by legal representatives. The provisions don't precise the meaning of phrase 'shall be understood also by persons who are not assisted by legal representatives' but due to existing opinions this phrase ought to be interpreted as regarding to clear and transparent information on rights, i.e. information prepared in a simple, accessible, communicative language. Till nowadays, in Polish practice there are no critical opinions on the linguistic aspect of presentation of information on the rights of detainees or suspects (also persons temporarily arrested) in letters of rights. It seems that in Poland the demanded standard of preparing proper information on rights in a simple and accessible language has been reached.
Portugal	The language in which it is provided is simple and accessible, understood by the suspect or accused.
Romania	
Slovakia	It is provided orally and in writing. It is cited from the legislation but according to Sec 34 para 4 CCP, if necessary, the information is explained in more detail.
Slovenia	The language of the Letter of Rights is simple and can be understood by the suspect or accused.
Spain	Simple for lawyers but maybe confusing for citizen and the public in general
Sweden	See the answer under (a) above.
The Netherlands	See (a) above.
UK	**England and Wales** See answer to (a) above.
	Scotland As can be seen from the extracts above, plain English is used. The Letter of Rights has been translated into a number of languages such that a person deprived of his liberty can be provided with a version in a language he understands.
	Northern Ireland

Question 3. ***What is the situation in your Member State – covering both national law and national practice - with respect to the right to information about the accusation regarding:*** *(a) the time when it is provided?*	
Austria	The information must be provided "as soon as possible" (§ 50 StPO, applicable if there is no detention) or "immediately" (§ 171(4) StPO, applicable in case of detention).
Belgium	The suspect receives before the questioning by the police a brief description of the facts (s)he will be interrogated about. In the written invitation for interrogation sent to the suspect not deprived of liberty, or verbally to the suspect deprived of liberty, but in any case before the questioning and, according the situation (deprived or not of liberty) a couple of days (written invitation for interrogation) or half an hour (information about the facts provided before the confidential meeting of the arrested suspect with the lawyer.
Bulgaria	In answering this question, I am again recalling the peculiarity of the Bulgarian legal system as pointed out in my answer to Question 1 (b). As far as the official bringing of a criminal charge is concerned, I reiterate that "official bringing of a criminal charge" means that the investigating organ is to inform in writing the respective person that she/he is accused of a concrete criminal offence or offences. The criminal offence is to be depicted in full details in the act of bringing the charge. *This act is then to be promptly submitted to and undersigned by the accused person.* From this moment on that person acquires the procedural position of "an accused person" in the meaning of both CPC and the Directive. In this case, the right to information on the accusation is provided in full compliance with the Directive as far as the time is concerned, i. e. "promptly". As it was pointed out in my answer to Question 1 (b) above, the arrest by the police of a person suspected to have committed a criminal offence is ordered in writing by an administrative order delivered by a police officer especially authorized by law to deliver such orders. The arrest order is to be *promptly submitted* to the arrested person. The arrest order must, *inter alia*, contain data about the factual and legal grounds of the arrest, including the depiction of the specific criminal offence that the arrested person is suspected to have committed. Therefore, in the case of an arrest by the police of a factual suspect, the right to information on the suspicion is also provided in compliance with the Directive as far as the time of provision is concerned, i. e. "promptly".
Croatia	The information must be provided immediately.
Cyprus	In case the suspect or accused is not deprived of his/her liberty then the Judge's Rules apply and the suspect before arrest when interrogated by the police should always be cautioned about his right to remain silent pursuant to the Judges Rules (Rule N.II). See my comments and opinion in answer to Question 1 (a) above. In case the suspect or accused is deprived of his/her liberty then article 3(1) of the Rights of Persons who are Arrested and Detained Law (Law 163(I)/2005) applies. Every person arrested by the Police is informed immediately after his/her arrest in a language that he/she understands about his/her rights Additionally, every member of the Police that arrests any person, provides to that person, right after his/her arrest, with a document titled "Rights of Detained Person", written in a language he/she understands (article 7 (1A)(a). It is also worth noting that according to the Law the arrested person has the opportunity to read the document and has the right to keep it in his/her possession throughout his/her detention (article 7 (1A)(a).

	When the document is not available in language that the person understands, the person is informed about his/her rights orally, in a language he/she understands. The document is provided to that person subsequently without undue delay in a language he/she understands (article 7 (1A)(c). If the arrest is carried out, outside the police station and the member of the Police does not know the language understood by the arrested person or does not have the necessary means to inform the arrested person, he is obliged, right after his/her admission to the Police Station, to inform the person in charge of the questioning, who is obliged to inform the arrested person, before the questioning starts (article 7 (2)). Every person arrested by the Police is informed right after his/her arrest in a language he/she understands, inter alia, about: - The reasons of his/her arrest or detention and about the offence that he/she is accused of having committed. As regards persons who are arrested on the basis of a European Arrest Warrant (L. 133(I)/2004), they are immediately provided with a document titled "Rights for Persons Arrested on the basis of a European Arrest Warrant", in a simple and understandable language. Among the rights listed in the document the arrested person has the right to be informed about the content of the European Arrest Warrant on the basis of which he/she have been arrested. See answer in 1 (a) as far as complaints against the Police for not implementing the said legislation
Czech Republic	Criminal prosecution starts when a suspect receives the resolution on the commencement of the criminal prosecution issued by a police authority. Since that moment the suspect is called the accused. Section 160(1) CCP states that the resolution on the commencement of the criminal prosecution contains description of the facts, legal qualification of the criminal offences, identification of the accused; justification of the resolution shall precisely stipulate facts which justify the criminal prosecution. The stage of the police investigation follows. At the end of the investigation stage the police submits a proposal to the public prosecutor to submit an indictment to the court. The indictment of the public prosecutor has to precisely identify the date, place, time and mode of the commitment of facts, legal qualification, contain justification, list of evidence proposed for the court´s hearing and legal considerations (see Section 177 CCP).
Estonia	Basic details of the merits of the case (the alleged facts, and legal classification) are given to the suspect before he/she is interviewed the first time as a suspect, and this is repeated (usually with more details added) every time the suspect is interviewed during pre-trial detention. After the close of pre-trial proceedings, the prosecutor shall prepare a statement of charges (indictment), and submits it to the accused and his/her counsel, as well as to court.
Finland	If the suspect is not arrested/detained, the information is provided either when called for questioning or at the beginning of the interrogation. If the suspect is arrested/detained, the information is usually provided at the same time when the arrest takes place.
France	Information is provided during the police interrogation, but the main problem is that the police are entitled to change the legal qualification of the facts. Then in such case, the formal a prior notification is unvalid, without a second and subsequent notification.
Germany	
Greece	It is provided during the stage of preliminary investigation or the main interrogation, before the apology.
Hungary	The accusation filed by the prosecutor is delivered to the accused by the competent court.
Ireland	In cases where a person is not taken into custody, they are informed in writing by summons of the nature of the allegation against them. They are not provided at that stage with particulars of the evidence to support the allegation. That material is only supplied following their first appearance in Court and as a result of the direction by the judge.

	Persons taken into custody are informed at the time of their arrest of the details of the offence for which they are suspected. It becomes a matter of police tactics as to the extent of disclosure that is made to them during detention of the strength of the case that the authorities have. This is considered an unfair practice by defence practitioners because they believe that if full information is provided at an early stage to a suspect they are put in a stronger position to make reasonable decisions in relation to how they are going to deal with the allegation and in particular if appropriate and a confession is warranted, to make a confession and extend cooperation to the authorities at the earliest possible time. This can become very material at a later stage in relation to sentence particularly for instance in cases of drug trafficking where a mandatory 10 year sentence will apply unless meaningful cooperation was extended at the earliest possible time. The withholding of information from suspects during detention compromises their ability to make fully informed decisions.
Italy	See the answer to question 2
Latvia	Immediately, but not later than 48 hours after the person has been arrested
Lithuania	The information about the accusation is provided to the accused person in the form of the Act of Indictment when the pre-trial investigation stage is finished. According to the Lithuanian Law the Act of Indictment should be delivered to the accused person before the case material is being sent to the court of first instance.
Luxembourg	Information concerning the charges are made by the police in presence of a lawyer if the person choose on. This information is given before audition. The investigation judge also provides information concerning the offenses or crimes supposed to be committed by the person under proceedings, before the hearing so that the person is summarily informed of the charges held against him.
Malta	Before the accused is arraigned
Poland	A detainee – according to the Article 244 § 2 CCP – shall be promptly informed, among others, about the reasons of his or her detention. This activity needs to prepare minutes by an investigation body (especially police) and the information on the reason of detention (an information on criminal act a concrete person is suspected of having committed) shall be necessary contained in the minutes (Article 244 § 3 CCP). In Polish law the category of 'reasons of detention' contains information on a crime and circumstances substantiating a possibility that a detained person has committed a crime. In practice the demand of 'prompt information' is fulfilled by investigation authorities. Investigation authorities inform a detainee immediately both about the regulations of law empowering these authorities to detain a person and about the reasons of detention (i.e. about a crime as well as about circumstances substantiating a possibility that a detained person has committed this crime). The opinion is that in practice the information about the accusation is sufficiently precise to safeguard the fairness of the proceedings as well as to safeguard the effective exercise of the right to defence. The same regards to a person detained on the basis of a European Arrest Warrant. A suspect – according to the Article 300 § 1 CCP – shall be informed before the first questioning about the contents of submitted charges as well as about their modifications. To be more precise, a suspect is informed by the police or prosecutor about charges, supplement of their contents, their modifications and about legal qualification of the crime - see appropriate Articles of the Polish CCP: 313 § 1, 314, 325a § 2 and 325g § 2 (such scope of the information is presented in a model letter of rights and duties of a suspect in the proper ordinance of the Minister of Justice). Information about charges, their supplement and modification as well as about legal qualification of the crime are detailed and they are provided without delay (not only in the light of the formal interpretation of proper legal provisions of Polish Code of Criminal Proceedings but also in fact, in practice). A suspect (an accused) temporarily arrested shall be informed, among others, about charges (as well as about the supplement of their contents, their modifications and about legal qualification of the crime) at the latest together with receiving a court decision on application of the temporary arrest. However it is not indicated expressis verbis by a concrete regulation of the Polish CCP.
Portugal	It depends; suspects or accused persons are provided with information about the criminal act that they are suspected or accused, in certain cases promptly and in certain cases with delay.

Romania	
Slovakia	Authority acting in criminal proceedings has an obligation to present a charge of committing the offence and proceed with criminal prosecution immediately after it will establish facts indicating that a criminal act was committed and if there are reasonable grounds to believe that it was committed by a particular person. Charges have to be presented in written form and the suspect – already accused has a right to receive copy of charges. There is no time-limitation for filing a charge against the suspect. It is usually the competence of the police to present a charge in pre-trial stage but such a decision can be questioned before the prosecutor. If the person is suspected, the authorities acting in criminal proceeding must communicate him his personal rights before first questioning. The accused is informed upon delivery of the copy of the ruling on laying the charges (Sec 206 CCP).
Slovenia	The suspects (arrested or not arrested) are provided with a general information about the criminal act they are suspected or accused of having committed as soon as they are made aware by the police that they are suspected or accused of having committed a criminal offence. Suspects or accused persons who are arrested or detained are also informed of the reasons for their arrest or detention.
Spain	For detainees the information given is oral. The police do not show the file. In investigation Courts, the suspect has full access to the file. The Investigation Judge has to inform orally about the provisional charges, but normally, he/she fails to do so. At the trial stage, the accused receives this information through the indictment.
Sweden	<u>Suspicions when not deprived of liberty</u> When a preliminary investigation has advanced so far that a person is reasonably suspected of committing the offence, he or she shall be informed about the suspicion. The information is usually given by the leader of the interrogation to the suspect initially during the first interrogation. <u>Suspicions when deprived of liberty</u> When a person is apprehended or arrested, he or she shall be informed about the suspicion and the legal grounds for the deprivation of liberty. The information shall be provided to the suspect in direct connection to the apprehension or the execution of the arrest order. <u>Charges</u> When the preliminary investigation is completed and the indictment, containing the charges, is submitted to the court, the court shall deliver a copy of the indictment to the accused person and his or her lawyer. When the accused person is deprived of liberty, the indictment is delivered promptly.
The Netherlands	It is common practice that the suspect is only concisely informed, prior to his first interrogation, about the reason he is under suspicion. This concise notification mostly is limited to mentioning the qualification of the offence ("theft"). Further factual, relevant information is disclosed as little as possible based on the genera assumption that disclosing those facts would be detrimental to the investigation. It is not always mentioned on what date the crime was committed, whether the offence was committed within a longer period of time, whether the offence has been committed before or whether there are any accomplices.
UK	**<u>England and Wales</u>** As soon as practicable after the arrival at the police station of an arrested person or after the arrest of a person who voluntarily attended the police station, the detainee's solicitor and appropriate adult (if applicable) must be allowed to inspect the custody record setting out the reasons and grounds for the detainee's arrest and detention. [§2.4] The information contained must include the circumstances and reasons for the detainee's arrest [§2.4(a)] and the grounds for each authorisation of detention [§2.4(b)]. The same information is provided to persons who voluntarily attend the police station or persons who have been cautioned but not arrested [C§3.21]. It is not clear whether this is equally applicable to suspects in terrorism cases. Code H does not have an equivalent provision. Before a suspect is interviewed, they and their legal representative (if applicable) must be given sufficient information to enable them to understand the nature of any offence and why the detainee is suspected to have committed it. The decision of what information to disclose rests with the investigating officer who may withhold details which might prejudice the criminal investigation. [C§11.1A; H§11.1] Guidance Notes to Codes C and H clarify that what is sufficient depends on the circumstances of any given case but it should normally include, as a minimum, a description of the facts relating to the

	suspected offence that are known to the officer, including the time and place in question. The aim is to avoid suspects being confused or unclear about what they are supposed to have done and to help an innocent suspect clear up the matter more quickly. [Note 11ZA]
	Scotland Information is provided by the police at the time of detention and arrest. As noted above, as a matter of practice, in Scotland, when a person is detained on suspicion of having committed an offence, he is (i) advised of the nature of the offence he is suspected of having committed, and (ii) cautioned that he need not say anything but that anything he does say will be noted down and may be used in evidence. Similarly, at the time of arrest, he is advised of nature the crime for which he has been arrested, cautioned, and asked whether he wishes to make any reply to the charge. Any reply given is noted. Details are recorded in detention and arrest forms.
	Northern Ireland

(b) the detail provided (the criminal act the person is suspected of; the lawfulness of detention; the accusation)?	
Austria	The suspect must be informed about the criminal act he is suspected of. Furthermore, he must be informed in writing within 24 hours about the reasons for detention (§ 171(3) StPO).
Belgium	This previously given information about the suspected offence/facts is very often – not to say always – very general and vague.
Bulgaria	Under the respective Bulgarian legal rules and as far as the bringing of a criminal charge is concerned, the criminal offence *is to be depicted in all details* in the act of bringing the charge. The same holds true about the rules covering the police arrest order, where the suspicion that a given person has committed a criminal offence is one of the reasons to accept that detention has been lawful. Therefore, as far as national law is concerned, the respective rules comply with the requirements of the Directive as regards the details of the information that is to be provided. There are no practical problems in the case of bringing the criminal charge. Yet there are practical problems in the cases of suspects arrested by the police, where police arrest orders very often contain none or very insufficient information about the specific criminal offence that the arrested person is suspected to have committed.
Croatia	When the accusation is submitted to the court, detailed information is provided on the accusation, including the description of the criminal offence and legal classification of the criminal offence, whteher or not the accused is deprived of liberty and since when is the accused deprived from liberty, and evidences that are the basis of the accusation.
Cyprus	In case the suspect or accused is not deprived of his/her liberty then according to the Judge's Rules the caution is made orally and in writing if the suspect or accused wishes to give a written statement. In the written statement it is written by the investigating officer the nature of the crime he is investigating against the suspect or accused and the right to silent which is signed by the suspect or accused. If the suspect or accused refuses to sign it then the senior police officer present, records on the statement itself and in the presence of the suspect or accused making it, what has happened. In case the suspect or accused is deprived of his/her liberty according to the Rights of Persons who are Arrested and Detained Law (L.163(I)/2005), the person arrested has the right to be informed about the reasons that he/she have been arrested or detained and what he/she is suspected or accused of having done, in a language he/she understands. According to the European Arrest Warrant Law (L. 133(I)/2004) the arrested person has the right to be informed about the content of the European Arrest Warrant on the basis of which he/she has been arrested.
Czech Republic	See the previous answer regarding content of the accusation and indictment. The suspect within the shortened pre-trial proceedings has to be at the latest at the beginning of the questioning informed about the fact that he is suspected of and what criminal offence it is seen in it (see Section 179b(2) CCP).
Estonia	Details of the suspicion that is given during pre-trial investigation includes a summary of alleged facts, incl the specific acts of the suspect, as well as legal classification thereof by way of references to the Penal Code. The statement of charges (indictment) must include detailed overview of all relevant facts, the legal classification thereof, list of evidence the accusations are based on, etc. Suspects who are remanded in custody shall be provided with an arrest warrant which includes (a) the details of the suspicion, and (b) the justification of detention, and its legal basis.
Finland	The details given vary. Usually at the beginning of the investigation only the title of the suspected crime is given. Even the time, place and date of the suspected crime is sometimes not given prior to the interrogation. This varies a lot, but on a general basis the information could be provided in more detail at an earlier stage.

	When charges are brought, the prosecutor describes the accusation in the deed description that is sent to court and then served on the defendant.
France	- Only the legal qualification, the date and location of the offence are disclosed.
Germany	
Greece	Usually the accusation is served to the accused in writing and is given the ability to receive copies of the file. Problems sometimes rise as to foreign defendants who do not understand the Greek language, so that the relevant information is not sufficient, due to poor quality of interpretation.
Hungary	The accusation is translated to the mother tongue of the accused.
Ireland	The fullest information is only provided after the first appearance before a Court but before the trial of the person.
Italy	See above
Latvia	The act the person is suspected of, legal classification of the criminal offence, as well as the nature of participation by the suspected person.
Lithuania	The above-mentioned information is provided in the accusation.
Luxembourg	Concerning the act the person is suspected having committed, the information is rather vague and short, indeed very low information is provided to the suspected person before questioning about the facts by the investigating judge or by the police officer. Full information concerning the facts is only available after the first hearing by the investigation judge in consideration to article 85 of criminal code. No information concerning the lawfulness of detention is given, which is absolutely contrary to article 7 of the directive.
Malta	Offence indicated (at times supplemented further with reference to the specific article of Criminal Code (Chapter 9 of the Laws of Malta)
Poland	Detainees (also on the grounds of a European Arrest Warrant) as well as suspects (accused) shall obtain detailed information on the reasons of detention and about charges (also about their supplement or modification). The 'detailed information' means that it's necessary to provide aforementioned persons with description of the reason for their detention or accusation, i.e. about criminal act a person is detained or suspected of having committed. Such criminal act – a basis of detention or a basis of a charge in criminal proceedings – must be described precisely and there must be given a legal qualification of such criminal act. The detailed information about accusation exists in the moment when the merits of the accusation are submitted to a court. This standard is present in regulations of the Code of Criminal Proceedings of 1997 and it is generally carried out in the practice of proper Polish authorities (but in practice there sometimes are observed some lacks in the field to respect this standard, especially when it will be considered the demand of precise description of a charged criminal act).
Portugal	The information provided on the accusation includes the criminal act, the nature and legal classifications of the criminal offence and the nature of participation by the accused.
Romania	
Slovakia	The ruling on laying the charges shall give the description of the act being investigated, the place, date and/or other circumstances of such act so as to prevent confusion with another act; it shall specify which criminal offence was committed through such act giving its legal nomenclature and the applicable provisions of the Penal Act as well as the charges on which the accused is being prosecuted.
Slovenia	On submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.
Spain	See the previous answer.
Sweden	<u>Information about the suspicion during the preliminary investigation</u> The provided information shall contain information about the criminal act the person is suspected of. At this stage the level of concreteness of the provided information vary from investigation to investigation. It generally consists of the legal classification of the alleged offence and a brief description of the act including time and place.

	A good practice that can be pointed out in context is the practice frequently applied in investigations concerning economic criminal offences. - In connection to the first questioning and before the questioning starts, a relatively detailed description of the criminal act in writing is handed out to the suspected person and his or her lawyer. <u>Details given about the charges in the indictment</u> The indictment shall contain the following information about the accusation: - identity of the accused person, - identity of the aggrieved person if there is any, - the criminal act, specifying the time and place of its commission and the other circumstances required for its identification, and the applicable statutory section - the invoked evidence
The Netherlands	See the answer to (a) above.
UK	**<u>England and Wales</u>** See answer to (a) above.
	<u>Scotland</u> As discussed above, details of the offence are provided both at the time of detention and arrest.
	<u>Northern Ireland</u> Detail provided- specific criminal offence detailed at decision by custody sergeant regarding lawfulness of detention. The detained person will have heard the general nature of the evidence (in very broad terms usually.) Suspect will be advised by custody sergeant been told that after hearing from the officer in charge of the case with some details of the nature of the allegations if the Custody Sergeant has satisfied themselves that the detention is necessary and lawful. Regarding an accusation in serious cases the PSNI often conduct a structured interview technique which means that they plan out a series of interviews at the start of the process to deal with the whole evidence gathering (interview) process. Usually a structured interview technique will ask the detained person to give an account of their movements at the relevant time. Often in this process the police will indicate that they are seeking to test the truthfulness of the detained persons account and will indicate that they have not fully disclosed all of the evidence or material in their possession.

(c) changes in the information?	
Austria	He must be informed about additional facts that cause the suspicion of another criminal act, if such facts arise during the investigation (§ 50(1) StPO).
Belgium	(see answer above)
Bulgaria	At both the legislative and the practical level changes in the information about the accusation are provided in full compliance with the requirements of the Directive.
Croatia	Both suspect and accused person must be provided with all changes in the information, as it is prescribed with this Directive.
Cyprus	According to article 13 of the Criminal Procedure Law Cap 155, every arrested person must be transferred to a police station and without delay he/she must be informed in a language he/she understands about the reasons of his/her arrest or detention and about the offence that he/she is accused of having committed. These persons must be provided, while in custody, reasonable facilities in order to ensure receipt of legal advice to enable them to be released on bail or to make arrangements for his/her defence or release. It is provided that the arrested person is informed immediately regarding any change in the provided information, which significantly affects his/her position as a suspect.
Czech Republic	If the fact is during the investigation assessed as other criminal offence than how it was legally qualified in the resolution on the commencement of the criminal prosecution, the police authority shall notify the accused about that (see Section 160(6) CCP)). The indictment may be submitted only for the same fact as the fact for which the criminal prosecution started. If the public prosecutor legally qualifies the fact differently, he shall inform the accused about the change in the legal qualification before submission of the indictment (see Section 176(2) CCP)).
Estonia	Changes in the initial suspicion are routine practice, and information on such changes is provided by submitting the revised text of the suspicion to the suspect before he/she is interviewed during pre-trial investigation. Changes in the statement of charges (indictment) can be made in two circumstances: a) when the trial judge orders the indictment to be returned to the prosecutor due to the fact that the indictment does not meet the requirements of the law -- the prosecutor must then prepare a new indictment, and submit it to the accused and his/her counsel and the court, effectively starting a new trial; b) an indictment can be changed by the prosecutor during the trial proceedings. In that case, changes must be submitted in writing, and the accused or his/her counsel can request the trial proceedings to be postponed in order to prepare the defence.
Finland	According to the Criminal Investigation Act, also changes in the information needs to be given promptly (as quickly as possible). Usually this also happens. In principle, according to the Criminal Procedure Act, the prosecutor is not allowed to alter the charge after it has been brought. However, it is not considered altering if the prosecutor announces another section of law than in the subpoena, or if he invokes another section in law than in the subpoena or invokes a new circumstance in support of the charge. The prosecutor can also expand the charge against the defendant to comprise a different act, if the court finds it appropriate. In practice the charge – especially in larger cases – can change during the trial and the final deed description can be given in closing arguments. This is obviously not very helpful from the defence point of view.
France	In that case, nothing is scheduled. Either the police start from the beginning all the notifications, either, the only mention the change during the interview and keep on with the custody measure.
Germany	
Greece	In any case, before referral to trial, the accused is informed of the accusation as it stands at the conclusion of the pre-trial stage. There can be a change of the accusation, if it is permissible under national law (e.g. the accused is referred to trial as an instigator of a crime and judged guilty as a direct accomplice, without interrupting the process in order to be informed about this change).

Hungary	Changes are also translated to the mother tongue of the accused.
Ireland	Once the prosecution has been commenced the prosecution are under a continuing obligation to make disclosure to an accused not only of material which the prosecution propose to rely upon, but also material which either undermines the prosecution case, assists in establishing a case for the defence or points to either of those two objectivists.
Italy	The Prosecutor is entitled to change part of the description of the illicit conduct even during the trial. In such a case, the defendant has the right to ask for new evidence. In practice, it happens that the Prosecutor does not make any change and the defendant is found guilty for offences even slightly different, if he was aware of all the evidence and material of the case and exercise his/her right to defence him/herself. This is a very controversial point in the Jurisprudence and it depends from case to case.
Latvia	A new document is issued without undue delay.
Lithuania	Changes in the accusation (i.e. Act of Indictment) could be made during the court hearings. In such case the accused person should be given time sufficient for the preparation for the defence against the new accusations.
Luxembourg	No changes in information so far, the directive isn't not even implemented.
Malta	Allowed
Poland	Neither Article 244 § 2, § 3 or § 5 CCP (concerning a detention) nor Article 607l § 4 CCP (concerning a detention on the basis of a European Arrest Warrant) as well as neither a model letter of rights concerning a detainee nor a model letter of rights concerning a detainee on the basis of a European Arrest Warrant don't contain the demand to inform such detainees about changes in information about the reasons of detention. So, in Polish regulations there is no demand to inform a detainee that – for instance – a reason of detainee has disappeared. In turn, Article 300 § 1 CCP and a model letter of rights and duties of a suspect include a demand to inform a suspect not only about the charge (about a charged criminal act which a person is suspected of having committed) but also about possible changes of this charge – i.e. about a supplement of the charge or about a modification of the charge). In turn, the Article 263 § 8 CCP indicates the right of a suspect (an accused) temporarily arrested to information about charges and the model letter addressed to such person (attached to the proper ordinance of the Minister of Justice) indicates the right to information on charges, on their supplement, on their modifications as well as on the legal qualification of the charged criminal act.
Portugal	Accused persons are in general informed of any changes in the information given.
Romania	
Slovakia	If there are grounds for changing charges the police has to notify the accused in writing (either by mail or in the Minutes of the proceeding).
Slovenia	Suspects or accused persons are informed promptly of any changes in the information.
Spain	The suspect is informed promptly about the changes.
Sweden	According to practice, the suspected person shall be informed about any changes of the suspicion that might occur during an ongoing preliminary investigation. According to law, the accused person shall be informed about any changes of the charges that might occur after the indictment has been submitted to court.
The Netherlands	See the answer to (a) above.
UK	**<u>England and Wales</u>** The right to information about the accusation is extended to ensure that the detainee is informed of the grounds for his detention and arrest if he is arrested for any further offences of other grounds of detention subsequently come to light. [§3.4(b)]
	<u>Scotland</u> The police submit a report to The Crown Office and Procurator Fiscal Service (COPFS), the only public prosecution authority in Scotland. Decisions about the exact nature and wording of charges are made by COPFS, after consideration of the facts and information provided by the police. The charge the accused will ultimately face in court (as detailed on the indictment or complaint) may differ from the charge(s) preferred by the police. The accused is provided with a copy of the indictment/complaint and a summary of the evidence against him.
	<u>Northern Ireland</u>

	Changes in the information – No formal procedure to disclose changes in information however in terms of the interview process police will seek to rely on answers given by suspect to questions at any trial and accordingly a failure to disclose a change in the information is something that could be raised by the defendant at trial. CHECK THAT IS CORRECT. It is unlikely any inference could be drawn from failure to answer Qs in these circumstances

Question 4. ***What is the situation in your Member State – covering both national law and national practice - with respect to the right of access to the materials of the case regarding:*** *(a) access itself to the material?*	
Austria	The suspect has the right to have access to the file at the police, the prosecutor and/or the court. This right includes the right so see all evidence (§ 51(1) StPO).
Belgium	Good access to the material (a) access itself to the material? YES
Bulgaria	Both academicians and practitioners in Bulgaria take the view that the right of access to the materials of the case is guaranteed in full scope and in full compliance with the requirements of the Directive. Access to the materials is granted in a way to allow the effective exercise of the rights of the defence. This holds true as regards both national law and practice. I fully share this view.
Croatia	According to the Article 184, Paragraph 4 of CPC, the suspect has the right to have access to the file at the police, the prosecutor and/or the court.
Cyprus	According to article 7(2) of the Criminal Procedure Law (Capital 155) If summon or warrant issued according to article 44 (summon or warrant for compelling attendance) of the Criminal Procedure Law (Capital 155) is served to the defendant, he/she has the right, with a written request submitted to the prosecution, to have free of charge access to statements and documents gathered during the investigation of the case concerning the criminal offence brought before the Court. According to the European Arrest Warrant Law (L. 133(I).2004,) the arrested person or his/her lawyer may ask and receive copies of all the documents, by the competent authority. It must be stated that when the accused applies in writing for the material evidence of the case then he must pay a charge to the Police (it costs a few cents per page and if there are photographs the cost is considerably more). The Directive makes a provision for the material to be provided free of charge.
Czech Republic	The access to the case-file is regulated in Section 65 of CCP. The suspect does not have a right to access the case-file. The right to inspect the case-file belongs to the accused. Until the person is considered an accused (see answer to the question 3(a)), the individual is not allowed to inspect the file against him. The right to the inspection concerns the whole file with the exception of the record about judges´ voting and personal data of a witness whose identity is kept a secret. This right includes the right to make any notes or make copies on own costs. The right to inspect the file may be restricted only in the pre-trial stage when the public prosecutor or the police authority may deny the access due to “serious grounds”. When the police authority denies access to the file, the person may request review of the seriousness of these grounds; the public prosecutor is obliged to speedily review them. The right to inspect the file cannot be denied to the accused and his lawyer once they were informed about the possibility to inspect the file (they are informed about this right at the very end of the investigation; subsequently the police authority decides, whether to submit to the prosecutor a motion to submit an indictment). It flows from the previously mentioned that should the prosecutor deny the access to the file, there is no right to request review of such decision. As for the suspect´s lack of this right, in practice it is difficult for the defence that the client may be months or even years considered by the law enforcement authorities as a suspect but does not have access to his file and thus cannot properly defend.

	In practice the vague term “serious grounds” justifying denial of the access to the file is typically applied by the Police before the accused is first questioned in the matter so that he does not have knowledge about the evidence the Police have against him (e. g. what the witnesses said etc.). I also experience that sometimes it is a part of the Police´s tactics to deny access to the file.
Estonia	According to § 341(1) of CCP, suspects have the right to request access to the evidence which is essential for specifying the content of the suspicion filed against them, if this is required for ensuring fair proceedings and the preparation of defence. According to § 35(2) of CCP, the accused is entitled to examine the criminal file through his/her counsel. If a prosecutor's office declares a pre-trial proceeding completed, the prosecutor's office shall submit the criminal file for examination to the defence counsel (§ 223(3) of CCP). In principle, the right of access to materials is guaranteed.
Finland	Is provided for in the Criminal Investigation Act. However, the access is only allowed to material which “may effect or may have effected” to the handling of the suspects’ case. This is usually problematic in such criminal investigations where wiretapping is carried out. The police are basically allowed to handpick the wiretapped conversations that they believe can have relevance in the matter. But all material is sent to all parties (prosecutor, court, defendant, complainant) in the same extent. One exception to access to material are crimes against children, in which the complainants are interviewed on video. The videos are usually never sent to the suspect but he/she is rather given the opportunity to acquaint himself with the material at the police station. From a counsel’s point of view this can be problematic, since it may be a long way to the nearest police station. It is also not often possible to arrange for a long meeting with a client in which both the counsel and the suspect watch the video and thereafter, usually on the spot, need to come up with possible additional questions to the child complainant or witness. It would be good if the videos could be released at least to the Members of the Bar, who are bound by professional code of ethics.
France	All the rules are the same except in case of offense of minus that one year of jail between for the accused deprived of liberty and not (circulaire du 19 décembre 2014, page 2 et 3). Absolutely nothing is scheduled as access to material of the case. Police refuse to provide the so called “file” and only give access to minor importance information such as the legal notification of custody (which is obvious when examined in a police station), medical reports, information on the rights given during custody (article 63-3-1). France as deliberately decided not to implement the directive on this issue to retrain the lawyers to acces to the file during custody to let the police freely conduct the interviews and investigations.
Germany	
Greece	The access itself to the material is provided under the condition that par. 3 of Article 101 of the Greek Code of Criminal Proceedings is not applicable. According to this, since the right to a fair trial is not affected, no material that can endanger fundamental rights of others or public national interest is provided. The defendant may, however, object through his counsel.
Hungary	At the time of finishing the investigation, the accused may have access to all materials of the investigation.
Ireland	As stated above the material is generally only made available to the accused person after their first appearance in Court and following a direction from the judge.
Italy	As a rule, access to the material (check and reading)is free of change, but getting copies can be in some cases very expensive. Only accused entered to legal aid can get copies free of charge.
Latvia	Access to the material is granted, when the law allows it
Lithuania	According to the law the suspect has a right of access to the materials of the case during the pre-trial investigation stage but this right could be deprived by the prosecutor’s decision under the argument that getting familiar with the case material could infringe the success of the pre-trial investigation.

	When the pre-trial investigation is finished, the person enjoys the right of access to the materials of the case that is gong be filed to the court.
Luxembourg	Information concerning the materials of the case in respect of article 85 of "code instruction criminelle" is made available to the lawyer and the suspected person only after first interrogation by the investigating judge. This procedure seems to be in conformity with the European human rights jurisprudence. (see AT v Luxembourg case)
Malta	Granted upon request (save materials are not subject to privilege)
Poland	Parties of the criminal proceedings (as well as their defence lawyers, proxies and statutory representatives) have the right of access to the files of the court case and they are allowed to prepare copies of these files. Other person are entitled to the access to files of concrete criminal case in the proceedings before the court when it's approved by the president of the court (Article 156 §1 and §2 CCP). Parties of the criminal proceedings (as well as their defence lawyers, proxies and statutory representatives) are entitled, upon their motion, to access - in the course of the proceedings before the court - to the materials of files of the preparatory proceedings in the scope they weren't submitted to the court (Article 156 §1a CCP). If the files include materials containing classified information (confidential or strictly confidential), reviewing of the files and preparing their copies must be restricted and these activities take into account conditions and demands determined by the president of the court or by the court (Article 156 § 4 CCP). On the grounds of the Article 156 § 5 CCP, parties of the criminal proceedings (as well as their defence lawyers, proxies and statutory representatives) have the right of access to the files of the preparatory proceedings if there doesn't appear a need to safeguard the proper course of the criminal proceedings or the protection of the important interest of the state. In the frames of this right entitled subject might prepare copies of the files and receive – for value – certified copies of these files. This right can be exercised by the parties of criminal proceedings also after the conclusion of preparatory proceedings. On the approval of public prosecutor, other persons exceptionally could have the access to the files of preparatory proceedings. The Polish Code of Criminal Proceedings of the 6th of June, 1997 (amended many times) also includes the regulation that parties of the preparatory criminal proceedings and some other subjects entitled to challenge the decision of the police or public prosecutor on discontinuation of the criminal proceedings (so, inter alia, a suspect) have the right to peruse the files of the preparatory proceedings (Article 306 § 1b CCP). In practice this right is exercised but not commonly (entitled person or institution deciding to exercise the mentioned right before challenging the decision on discontinuation of the criminal proceedings is asked for submission of motion to peruse the files of preparatory proceedings; such motion is attached to files of discontinued preparatory proceedings). If in the course of preparatory proceedings a motion to apply or to extend the temporary arrest is lodged, a suspect and his or her defence lawyer shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion (see the amended Article 156 § 5 a CCP being in force from the 2nd of June, 2014). This rule harmonizes with the European Union standard and it guarantees the fairness of the criminal proceedings. It should be noted that this rule shall be considered in the context of the new Article 249a CCP which states that the grounds of the court decision concerning the application or extension of the temporary arrest shall be only findings in the light of evidences opened to a suspect (an accused) and his or her defence lawyer (Cf. e.g. A. Grochowska, Ł. Malinowski, Prawo stron do informacji w postępowaniu karnym w świetle nowelizacji kodeksu postępowania karnego z dnia 27 września 2013 r. oraz z dnia 28 listopada 2014 r. [in:] M. Rogacka-Rzewnicka, H. Gajewska-Kraczkowska, B.T. Bieńkowska (eds.), Wokół gwarancji współczesnego procesu karnego. Księga Jubileuszowa Profesora Piotra Kruszyńskiego, Warszawa 2015, pp. 126 – 127). The right to information is widely guaranteed also in the sphere of regulations of the Code on Proceedings on Petty Offences of the 24th of August, 2001 (consolidated text – Journal of Laws of the 26th of March 2013, item 395 with subsequent amendments).
Portugal	The access of the materials, in practice, is several times not provided appropriately; sometimes the access is limited.
Romania	

Slovakia	Both accused and his defence counsel have the right to access the files of the investigation, including evidence and data collected during investigation, except for the voting report and those sections of the report that contain data on the identity of an undercover agent. They have the right to get copy of reports (including operation he was not informed about), to make excerpts and notes, and to have duplicates of the files and the parts thereof (Sec 69 CCP).
Slovenia	Access to the materials is granted.
Spain	There are serious problems with access to files in police stations. The directive and the law which implemented it does not seem clear. They state that the competent authorities has to show the documents which are « essential to challenging effectively, the lawfulness of the arrest or detention », but, there difficulties in order to identified this type of documents. The police, despite this provision, still deny the access of the lawyer or the person arrested to the file.
Sweden	According to Swedish law, there is no unrestricted right of access to the material during an ongoing preliminary investigation. When a person has been made aware that he or she is suspected of a crime, the person has the right to be informed continuously of developments in the investigation only to the extent it can be made without prejudice to the ongoing investigation. There is no standard practice of granting continuous access to the material from the preliminary investigation. Such access is in principle granted only on request from the suspected person or the lawyer and then only under certain circumstances (e. g. parts of the material may in certain investigations with extensive amount of reading materials be provided to the lawyer). Information about specific facts and circumstances from the investigation is usually only provided to the suspected during the questionings and then as “basis for confrontation”. Before the prosecutor decides on prosecution the investigation material is made available to the suspected person. The material is compiled in a record of the preliminary investigation. At this stage the suspect has no no formal right to get a copy of the record. A copy can be made available e. g. at the police station for reading. However, if a lawyer is appointed at this stage, a copy of the record is usually handed out. As soon as a decision to prosecute has been made, the suspect or the lawyer has a right, upon request, to receive a copy of the record of the preliminary investigation. If public defence counsel has been appointed, a copy shall be delivered or sent to him or her without special request.
The Netherlands	Article 30 - 32 NCCP incorporates the right of a suspect to access the file. According to article 30.1 the suspect has the right to access to his file after his first interrogation, but in exceptional circumstances parts of the file may be withheld. However, the reports of his own interrogations cannot be withheld from the suspect. The same goes for reports of investigative actions the suspect or his lawyer were allowed to attend as well as the reports the full content of which were read to the suspect. Prior to the moment an indictment has been served any request to receive the file should be addressed to the prosecution. The file is not automatically provided: the suspect, or his lawyer, should ask for it.
UK	**<u>England and Wales</u>** After the release of the individual, the detainee, his legal representative or appropriate adult (if applicable) have the right to inspect the original custody record provided they give reasonable notice of their request. [C§2.5; H§2.7] The information provided in the custody record shall include information about the circumstances and reasons for the detainee’s arrest as well as the grounds for each authorisation of detention. [§2.4]
	<u>Scotland</u> Access to the material is governed by part VI of the Criminal Justice and Licensing Act 2010, and the Code of Practice (CoP) issued by the Lord Advocate under that Act. The preamble to the Code states that its purpose is to “provide guidance in relation to the disclosure of evidence in criminal proceedings”, and warns that a failure to comply with the Code may result in a breach of Article 6 ECHR. The CoP contains six “principles of revelation”, which provide guidance to the police as to what information they are required to provide (“reveal”) to the Crown. They are required to reveal, in particular, “all information that may be relevant to the issue of whether the accused is innocent or guilty”.

	The CoP also contains six “principles of disclosure”, which provide that the Crown “is obliged to disclose all material information for or against the accused, subject to any public interest considerations”. The Act provides that information is material, and will fall to be disclosed, where the information would materially weaken or undermine the evidence that is likely to be led by the Crown; materially strengthen the accused’s case; or is likely to form part of the evidence to be led by the prosecutor. The duty of disclosure is proactive and requires the Crown to spontaneously disclose material information without any request from the defence.
	<u>Northern Ireland</u> Access to the material -prior to the interview or in interview evidence will be put to the accused by police to allow the accused to offer any explanation or account that they have to explain their position. Written copies eg of statements are not normally provided at this stage. At Court- prior to requiring the accused to indicate if pleading guilty or not guilty copies of statements and forensic evidence etc will be served on the accused. All evidence upon which the prosecution seek to rely would normally be served at this stage, although if material becomes available to the prosecution later it can be served. It can take a long time for a case to be prepared for serious criminal charges preparation time of 8-12 months normal without any evidence being served.

(b) the time when it is provided?	
Austria	The access must be granted during the office hours (§ 53(2) StPO). According to the case law, short delays due to administrative requirements shall be admissible; in practice, it may sometimes take several days to have access to the file.
Belgium	For suspect NOT deprived of liberty : when he asks it in writing to the magistrate in charge of the investigation (the latter may however refuse for the good sake of the investigation), a right of appeal exits but only concerning a refusal of an investigating judge, not if it is the prosecutor who investigates). Such request to access the investigation file may however not be file earlier than one month from the opening of the proceeding. For suspect deprived of liberty : at the latest after 4 days of privation of liberty, he and his lawyer receives the possibility to access the investigation file during one day, and subsequently during two days each month. He or his lawyer may also ask in writing for a “normal” access to the file to the magistrate in charge of the investigation, as the suspect not deprived of liberty (see previous bullet).
Bulgaria	Access to all the materials is granted to the accused person or her/his lawyer in due time upon finishing all the investigating activities in the pre-trial stage of proceedings. Access is granted at any time of the trial stage on the request of the accused person or her/his lawyer. This holds true as regards both national law and practice.
Croatia	According to the Article 184 of CPA, victim, injured party and their lawyer are entitled to access the material after they gave their statement in that concrete criminal procedure. The accused person and his defence lawyer are entitled to access the material after interrogation, or after delivery of decision on conducting of investigation or private sue.
Cyprus	According to Article 7 of the Criminal Procedure Law Cap 155 the material of the case is given in time so that the defence lawyer has time to prepare the defence of the suspect or the accused. In my experience this is done according to the said legislation.
Czech Republic	See the previous answer.
Estonia	According to § 341(1) of CCP, access to the evidence collected shall be ensured at the latest after the prosecutor's office has declared the pre-trial proceedings completed and submitted the criminal file for examination. The above rule means that in vast majority of cases, access to materials is provided only after the close of pre-trial investigation proceedings (which could take many years). The suspect and defence counsel are entitled to apply for access to be granted earlier, but the prosecution has wide discretion to refuse it.
Finland	Usually only after the pre-trial investigation stage is concluded and the material is sent to the parties for closing submissions to the pre-trial investigation.
France	See above.
Germany	
Greece	Usually before the apology, during the investigation stage and prior to the hearing of a case before court, upon request.
Hungary	See above.
Ireland	The material is often provided only a matter of days before a trial takes place which is considered unsatisfactory. There is no statutory scheme governing disclosure and this is a subject of criticism by defence lawyers. A real concern is that no individual person is identified as having responsibility for the completeness of disclosure and accordingly nobody is accountable if there is a shortcoming.
Italy	at the moment the investigations come to an end, when there is an indictment/submission of accusation, request for a trial and when, even before, under national law, an activity or investigation must be carried on in the presence of the lawyer
Latvia	After completion of a pre-trial criminal proceedings or when the case is closed.

Lithuania	The access to the full case material is being provided when the pre-trial investigation is finished.
Luxembourg	After first hearing
Malta	As above
Poland	Generally, the time in which the parties or other entitled persons may have granted the access to the materials of criminal case in the course of proceedings before the court is not marked by using the phrase 'in due time' or other synonymous one. The mentioned right might be exercised by parties and other entitled subjects in every moment of the proceedings before the court and the access to files is granted by them without an undue delay. However, although the access of accused persons to materials of the proceedings before the court without an undue delay is not clearly expressed by proper procedural provisions, it results from the interpretation of the right to defence as well as from the right to the fair criminal proceedings (the right to a fair trial). Nowadays, it's a standard of Polish practice. The same remarks generally concern also a situation in preparatory proceedings (this right might be exercised by parties also after the conclusion of the preparatory proceedings). Exceptionally, the Article 156 §5a CCP clearly states that in case of lodging a motion for application or extension of the temporary arrest in the course of preparatory proceedings, a suspect and his or her defence lawyer shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion. By the way it may be noted that on the grounds of Polish criminal proceedings regulations if there exist prerequisites to conclude preparatory proceedings (an inquiry), on the request of a suspect, an injured person, a defence lawyer or a legal representative concerning the enabling of the final referring to the materials of the preparatory proceedings, the authority conducting the preparatory proceedings (police, prosecutor) informs the entitled person about the possibility to review files of the proceedings and fixes a date for being familiar with materials, ensuring the access to the files of criminal case and informing which materials of these files will be submitted to the court together with the indictment (see the Article 321 § 1 CCP). See more e.g.: M. Jeż-Ludwichowska, Dochodzenie po 1 lipca 2015 r. z perspektywy obrońcy i pełnomocnika [in:] P. Wiliński (ed.), Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach, Warszawa 2015, pp. 96 – 99; J. Śliwa, Dostęp obrońcy i pełnomocnika do akt sprawy w postępowaniu przygotowawczym – wybrane aspekty praktyczne [in:] P. Wiliński (ed.), Obrońca i pełnomocnik w procesie karnym po 1 lipca 2015 r. Przewodnik po zmianach, Warszawa 2015, pp. 137 – 139.
Portugal	The access to the materials, in practice, sometimes is not granted in a due time; it depends on the judge.
Romania	
Slovakia	Information is provided upon request. Should the access to files cause delays in the criminal proceeding, the law enforcement bodies are entitled to limit the access to the files by an adequate period of time.
Slovenia	Access to the materials is granted at the submission of the merits of the accusation to the judgment of a court.
Spain	Promptly in Court premises.
Sweden	See the answer under (a) above.
The Netherlands	Though the moment of access to the file exists immediately after the first interrogation, in practice it appears quite difficult to actually receive the file. generally speaking three distinctions can be made: 1. After his first interrogation the suspect requests the police to provide him with the file. The police consults the public prosecutor and the same day the file is provided to the suspect r his lawyer. This scenario seems to comply with the Directive. 2. In case the suspect is in pre-trial detention the lawyer requests the public prosecutor after the first interrogation to provide him with the file. The prosecutor rejects this request without giving any motivation. As a result, the lawyer has to file a complaint against the prosecutor's decision to refuse with the court. Foundation of the prosecutor's rejection may be tactical reasons, but it is not an exception that the prosecutor simply does not know or realize that the general rule is that the suspect actually has the right to receive the file directly after his first interrogation. Further, it is no exception that the prosecution, guided by the police, gives an alternative explanation to the law while the wording of the law is crystal clear. Often, once the complaint has been submitted, the file suddenly is provided as yet. Meanwhile, several weeks have gone by. It seems very likely that often this is the result of well

	deliberate tactics of the police and/or the prosecutor to delay the moment the lawyer receives the file as much as possible. 3. If a suspect is not in pre-trial detention, the file is never automatically send to him by the public prosecutor, not even if it is completed and not even if the suspect has been interrogated. If the suspect's lawyer wishes to receive the file prior to the moment a court hearing has been scheduled he has to be active, by explicitly and in writing asking for the file), and sometimes be very perseverant as the mere fact that a written request to receive the file has been filed often still does not result in receiving the file though the suspect is entitled to. In case the prosecutor explicitly refuses, for instance because he has not yet read the file himself and does not want the lawyer to have the file at his disposal before the prosecutor has made a final decision to continue the criminal proceedings. Here again, the defense should file a complaint with the court to force the prosecutor to provide the file. It can be concluded that the prosecutor's work processes are not implemented in such a way that the file actually is provided to the suspect or his lawyer directly after his first interrogation. Dutch law explicitly requires the suspect to file a request while the Directive (article 7) orders the Member States to take care that the suspect and his lawyer actually have access to the file. The Directive requests an active attitude from the Member States in this respect; Dutch law seems to require an active attitude from the suspect and a passive attitude from the authorities.
UK	**England and Wales** See the answer to (a).
	Scotland The 2010 Act provides that information must be disclosed “as soon as reasonably practicable” after an accused person’s first appearance in court charged with an offence (in a solemn case) or after a plea of not guilty is entered (in a summary case). The duty to disclose is a continuing one; the Act requires the prosecutor to review the information in his possession “from time to time” and to disclose any information which has become material. In particular, when details of an accused person’s defence are made known to the Crown, the prosecutor must review all information which may be relevant to the case, and disclose any information considered to be material in light of the accused’s defence.
	Northern Ireland See above

(c) the quality and quantity of material provided?	
Austria	The file including all the evidence must be provided. However, some exceptions may apply.
Belgium	For suspect NOT deprived of liberty : the magistrate in charge of the investigation may limit the scope of the investigation file he grants access to, or grant a full access. For suspect deprived of liberty : the magistrate in charge of the investigation may NOT limit the scope of the investigation file he grants access, so it is the entire and complete investigation file that the suspect and his lawyer may see.
Bulgaria	Access is provided to ***all*** the materials collected with no exceptions and for a time as long as needed by the accused person and her/his lawyer to get acquainted with them for the sake of the effective exercise of the rights of the defence. The accused person and her/his lawyer are allowed to take notes on the materials without any limitations. During the trial stage of proceedings the accused person and her/his lawyer are free to receive, upon their request, copies of each one of the materials collected and no matter how numerous these materials may be. This holds true as regards both national law and practice. *An example of good legislative approach and practice going beyond the requirements of the Directive:* Bulgarian law ***does not provide for the derogations in the meaning of Article 7.4*** of the Directive and they never apply in practice. Access is granted to ***all*** the materials collected with no limitations whatsoever, both in the pre-trial and the trial stage of proceedings.
Croatia	The file including all the evidences must be provided.
Cyprus	The suspect or accused has access to all the statements and documents gathered during the investigation of the case concerning the criminal offence brought before the Court.
Czech Republic	See answer (a).
Estonia	Usually access to materials is granted by way of handing over a copy of the criminal file, which contains all documents prepared during pre-trial investigation, as well as all pieces of evidence relevant to the case. In some cases, the amount of materials can be tens of thousands of pages.
Finland	I'm not sure I understand the question, but the suspect receives one copy of all the material included in the pre-trial investigation (police) report.
France	*see above
Germany	
Greece	Copies of the whole file are provided, except for the occasions under par. 3 of Article 101 of the Greek Code of Criminal Proceedings, as previously described in detail.
Hungary	See above.
Ireland	In the preponderance of cases which are dealt with by a judge alone in the District Court the material provided is limited to the statements of intended prosecution witnesses. Fuller disclosure is more generally a feature in more serious cases tried in the higher Courts before a judge and jury.
Italy	Everything requested
Latvia	After completion of a pre-trial criminal proceedings or when the case is closed access to the material is provided fully, except the occasion when the material contains state secret or sensitive personal information (like address of person, information about health).
Lithuania	In practise, usually the documents related directly to the suspect are being provided to him/her (questioning of the suspect, search of his/her premises, etc.). Meanwhile, the documents that are provided to the suspect are not of a sufficient quality to effectively challenge the legal and factual grounds of the suspicion.
Luxembourg	Depends on the quality of the investigating file.
Malta	As above
Poland	The Article 156 § 1 CCP states about the files of the criminal case in proceedings before the court and it doesn't limit for entitled persons the scope of this files. In turn, the Article 156 § 1a CCP states about the files of the preparatory proceedings in the scope they were not submitted to the court. The Article 156 § 4 states that if there appears a danger to reveal classified information (confidential or strict

	confidential) persons who review the files and prepare their copies shall take into account conditions and demands determined by the president of the court or by the court. By the way, certified copies of such files are not delivered to the interested persons. According to the Article 156 § 5 CCP, the files of preparatory proceedings are available to parties of the criminal proceedings (as well as their defence lawyers, proxies and statutory representatives) if it is not excluded by the necessity to safeguard the appropriate (correct) course of the proceedings or to protect the vital interest of the state. In the light of the Article 156 § 5a CCP if in the course of preparatory proceedings a motion to apply or to extend the temporary arrest is lodged, a suspect and his or her defence lawyer shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion. So, the specific procedural situation (a stage of proceedings and its concrete circumstances) may determine the scope of the access to the materials of a criminal case. Sometimes it will be wide, including all materials of the criminal proceedings, and sometimes it will be limited, regarding only certain materials or certain way of their processing. The interested and entitled person could have the access to such documents like: decisions and orders regarding such person, minutes concerning the proceedings to take evidence and attachments to such minutes, public and private documents, opinions of experts. These standards are accepted and kept in practice. No provisions concern the quality (technical quality) of materials which are provided to entitled persons. In practice the general opinion is that such quality is sufficient and acceptable, though it happens that a quality of certain materials is – frankly speaking – lame.
Portugal	Several times it is difficult to access to the materials, because it is a profusion of materials and it is necessary to consult it at the court of justice.
Romania	
Slovakia	Complete files of the investigation, including evidence and data collected during investigation, except for the voting report and those sections of the report that contain data on the identity of an undercover agent. Undisclosed materials, bank secret, commercial secret, tax secret, post and telecommunication secrets must be respected.
Slovenia	All the evidential material is provided in the form (i.e. quality and quantity) that the court has it too.
Spain	Once the case is in Court, the access is full. In Police Station is difficult to get that access, and once you get it, this access is restricted (i.e. it is not possible to make copies of the documents, so the lawyer has to read it on the spot).
Sweden	Preliminary investigation As outlined under Question 4 (a)-(b) the material itself is usually not made available to the suspect during an ongoing investigation. In situations where access to material is granted, the quantity of the material differs depending on the circumstances of the case. The material made available to the suspected person before the prosecutor decides on prosecution shall consist of all matters of importance to the investigation. As mentioned above the suspect is entitled to a copy of the record of the preliminary investigation after a decision on prosecution has been made. This copy consists of the same material that the prosecutor has submitted to the court together with the indictment. The suspect and the lawyer may request access to any such additional material of the investigation that has been left out from the record of the preliminary investigation
The Netherlands	See the answer to (b) above.
UK	**England and Wales** See the answer to (a).
	Scotland All relevant material (as defined in the Act – discussed above) must be disclosed. There is accordingly no limit to the quantity of material which may require to be disclosed – each case will be considered individually.
	Northern Ireland

	At Court- anything that the prosecution seek to rely on. After Defence Statement (setting out what the defendant's case is and why they are denying the allegation) is served, any material the police hold which would assist the defence must also be provided.

(d) the way in which the access is granted (e.g. paper format, electronic format)?	
Austria	In general, the suspect can see and read the actual file. This right includes the right to obtain copies of all documents (however, a fee may be requested). Access may be granted electronically as well. In practice, lawyers often get the file by means of secure electronic communication.
Belgium	Paper or electronic format
Bulgaria	Access is granted in paper format. Access is also granted to all pieces of material evidence collected during the proceedings.
Croatia	The access is granted in paper format.
Cyprus	The person arrested or his/her lawyer is granted a copy of the documents mentioned above. The copy of the documents is given in paper format. In case there are photographs the defence lawyer is given a copy of the CD and a hard copy of the photographs. In case of a video or audio recording the defence lawyer is given a copy of the CD. In my opinion all the material of the case should be given to the suspect or the accused and/or his/her lawyer free of charge in electronic format unless otherwise requested by the accused so that we can ensure an efficient and speedy criminal trial.
Czech Republic	It is provided in a paper format. Data stored e. g. on DVDs only (due to the big volume) are indeed provided also only on DVDs. In practice attorneys are taking photos of the paper file (via a camera or a mobile phone) or making a scan of it via a scanner.
Estonia	As a general rule, access is granted by handing over an electronic copy of the criminal file. The electronic copy is essentially a scanned copy of paper file, saved in a series of PDF-format files burned to CD or DVD disk(s). Defence counsel can submit a reasoned request for a paper copy. This is usually done when the defendant is in custody, because reviewing an electronic copy at a detention facility is difficult due to technical and organisational problems (lack of sufficient number of suitable computers, etc).
Finland	It varies. Still today, most of the police reports are delivered in paper format. However, in larger cases it is quite customary that the material is delivered on a CD-ROM or DVD.
France	Only a visual access to limited and minor information is granted according to article 63-4-1.
Germany	
Greece	It depends on the evidence. For example, the documents are obtained in hard copy with the diligence of the accused or his/her counsel.
Hungary	According to the decision of the accused (paper or electronic).
Ireland	Invariably the material is supplied in paper format. It is the case however that where the material is itself electronic for instance audio-visual recordings, CCTV, etc. that will be provided in an electronic format.
Italy	Both
Latvia	After completion of a pre-trial criminal proceedings – in paper format as a copy, when the case is closed – person is entitled to get acquainted wiht the material, but a copy is not issued.
Lithuania	Usually it is paper format.
Luxembourg	The lawyer has to consult the file in a room at the office of the investigating judge. No privacy is guaranteed during the consultation of the file because other lawyers are also present in order to consult their case files. This is a very regrettable situation. Formerly at the investigation office at the Tribunal d'arrondissement of Diekirch (North of the Country) it was absolutely understood by judicial authorities, and totally normal for every one, that the lawyer

	could ask and obtain a material copy of the complete file (paper format) and this copy was immediately send to his office, free of any charge. But the chamber of council from the court of appeal in Luxemburg abolished this right to obtain a copy for what ever reason, nobody really knows. The public prosecutor on the other hand has the possibility to get permanent access to the file. This brings up a problem of "inegality of arms" concerning the access of the file, and in a wider view concerning the preparation of defence.
Malta	As required
Poland	Although there aren't formal obstacles to grant the access to the materials of the criminal proceedings in electronic format, the interpretation of the provisions of the Article 156 CCP and the dominating reality in the field of preparing files of the proceedings in criminal cases in Poland lead to the conclusion that materials of the criminal cases are made available by the competent authorities generally in paper formats. The common practical standard is that the entitled persons have the access to paper documents from the files of the proceedings before the court (as well as – in a proper scope – to paper documents from the files of the preparatory proceedings) and they can prepare their own copies of such documents (preparation of copies includes also preparation of digital copies). (One marginal remark may be done - a digitalization of files of criminal proceedings still isn't the standard resulting from regulations of law concerning criminal proceedings). However if the activities of criminal proceedings are recorded, persons having the right of access to the files of the proceedings (to materials of a criminal case) shall have also possibility of access not only to paper minutes of such activities but equally to video and audio recordings of the activities (which are attachments to the minutes). The known practice in Poland generally respects this standard (obviously if it is technically possible in places where the right of access to materials is exercised).
Portugal	The access to the material is granted in paper format, but not all the materials.
Romania	
Slovakia	Paper format.
Slovenia	The access is granted in paper format.
Spain	Paper format, but in big procedures, it is possible to get it on electronical means.
Sweden	Material of the investigation is generally delivered in paper format. In cases with extensive investigation material, the lawyer is usually given the opportunity to receive the material in electronic format e.g. CD-ROM, USB memory stick. The prosecuting authority as well as the courts have routines for sending the material via e-mail.
The Netherlands	In so far as a request has been filed, the file is provided by mail in hard copy. Only on request and only in large investigations where specialized investigative teams are working a digital copy is provided. However as far as digitizing is concerned progress is being made. In some districts digitalization has made much progress. Depending on the district where the criminal case will be brought before court part of the files are provided to the lawyer via a "lawyer's portal". The prosecution decides which files will be provided digitally. The bar does not have any influence on this choice. Though as a rule the files should be provided at least 6 weeks prior to the court hearing, it is no exception that they are delivered only a week or a few days before the court hearing takes place.
UK	**England and Wales** See the answer to (a).
	Scotland Material is disclosed via a secure database, where is downloaded and printed by defence solicitors.
	Northern Ireland Paper

(e) whether the access is granted to the lawyer or the suspected person or to both (if requested)?	
Austria	The right is exercised by the lawyer, if the suspect has appointed one; otherwise, the suspect may exercise the right himself. The right is not granted to both lawyer and suspect at the same time.
Belgium	To both
Bulgaria	Access is granted to both.
Croatia	To both
Cyprus	As provided by article 7(1) of the Criminal Procedure Law (Capital 155) the documents are granted to any person who is arrested and detained and/or his/her lawyer.
Czech Republic	Both the accused and his lawyer have the right to access the file.
Estonia	Copy of the case file is submitted to the defence counsel. It is up to the defence counsel to submit the materials to the suspect or the accused (§ 2241 of CCP).
Finland	Access is granted to both, but only one copy of the material is free of charge.
France	Both the lawyer and the accused person (article 63-4-1).
Germany	
Greece	Both – to the counsel, if authorized.
Hungary	Both.
Ireland	The judge in the District Court will always enquire as to whether a person is legally represented. If the person is not represented they will enquire as to their means and advise the person of their entitlement to free legal aid if it arises. It would be fatal to any proceedings if a person was not appraised of their right to be legally represented and any conviction that followed would be vulnerable to challenge in the higher Court.
Italy	yes, both. In particular, it is provided the access to audiofiles when interception of conversations have taken place during investigations
Latvia	To both.
Lithuania	To both, if requested.
Luxembourg	To both The suspected person may request to consult his file either at the office of the instructing judge, either he may ask to have the file transferred in prison and a supervision is done while he consults it. But a very uncomfortable point is that till the end of the investigating period the lawyer has no possibility to go through the file together with the person he assists, and this due to the fact that he is not in possession of a material copy.
Malta	Both
Poland	As it has been already indicated above, the access either to files of criminal proceedings before the court or to files of preparatory proceedings is available to suspects, their defence lawyers, their proxies and their statutory representatives. On the grounds of the Article 156 § 5 CCP, the right of access to files in the course of preparatory proceedings can be exercised by the parties (so, inter alia, by a suspect) also after the conclusion of preparatory proceedings. (In the mentioned context, the law-maker doesn't enumerate clearly other subjects like a suspect's defence lawyers, his or her proxies, his or her statutory representatives). In turn, on the basis of the Article 156 § 5a CCP if in the course of preparatory proceedings a motion to apply or to extend the temporary arrest is lodged, a suspect and his or her defence lawyer shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion.
Portugal	The access is granted to the lawyer and not always to the suspected. It should be noted that the access is limited during the questioning until person is formally accused.
Romania	
Slovakia	Both.
Slovenia	The access is granted is granted to both.
Spain	Normally, the file is only shown to the lawyer.

Sweden	There is no uniform practice regarding this. Material is primarily provided to the lawyer, if appointed. On request, a copy is normally also provided to the suspected person. In cases with extensive investigation material, a copy is generally offered both to the lawyer and the suspected person.
The Netherlands	The files are only provided once. If a suspect has a lawyer, the lawyer receives the file and he is supposed to provide his client with a copy and discuss the file with his client.
UK	**England and Wales** See the answer to (a).
	Scotland If the accused is represented by a defence solicitor, then the information is disclosed directly to the solicitor. If the accused has chosen to defend himself, then access to the information is facilitated.
	Northern Ireland either Lawyer of Suspect not both

(f) whether access is granted free of charge? if not or only partially, which costs arise?	
Austria	Access is granted free of charge. However there are charges for copies (unless the suspect is eligible for legal aid; in case of detention until the first hearing; for expert opinions), which presently amount to the following sums: - in case of paper copies: 63 cents per page; 32 cents if the copy is made without using resources of the court (e.g. by taking a picture with a digital camera). - in case of electronic transmission: 32 cents per file.
Belgium	Free of charges
Bulgaria	Access is granted free of charge. This is not explicitly provided for by the law. Thus, the importance of this requirement of the Directive is somewhat underestimated at the normative level. In my view, in order to reinforce the significance of the "free of charge" requirement, it is necessary to amend CPC by introducing the relevant rule. Anyway, in practice access is always provided free of charge.
Croatia	Access is granted free of charge, but copy of every paper cost 1,00 HRK.
Cyprus	According to article 7(2) of the Criminal Procedure Law (Capital 155) If summon or warrant issued according to article 44 (summon or warrant for compelling attendance) of the Criminal Procedure Law (Capital 155) is served to the defendant, he/she has the right, with a written request submitted to the prosecution, to have free of charge access to statements and documents gathered during the investigation of the case concerning the criminal offence brought before the Court. In case that the defendant applies in writing to be provided with copies of these material, the fee that is paid, is determined by the Chief of Police with the approval of Minister of Justice and Public Order. Additionally, according to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L. 18(I)/2014), if the suspect or accused person does not understand the language of the criminal proceedings the competent authority ensures that, within a reasonable period of time, the accused or suspect is provided with written translation of all documents that are essential to ensure that they are able to exercise their right to defense and to safeguard the fairness of the proceedings. The Republic of Cyprus meets all costs of the translation provided by the Law.
Czech Republic	The access is free of charge. The accused bears the costs for any copies made. See answer (d) for practical arrangement how the copies of the file are made.
Estonia	Copy of case file is provided free of charge.
Finland	See previous answer.
France	It is free of charges.
Germany	
Greece	Never in practice access is given free of charge, even if the accused has a low income. The cost depends on many factors (e.g. court, the size of the file, etc.). Indicatively, in Athens, the cost of obtaining copies is 0,08 Euros per one-sided page. Usually photocopies are made by individuals operating in the courts. However, the counsel may study the file printed in the department where it is kept without obtaining copies (par. 1, Article 101 of the Greek Code of Criminal Proceedings.
Hungary	One copy per person is free of charge.
Ireland	Where legal aid is granted it covers the entire cost and no contribution is thereafter sought from the accused. Regularly political persons suggest that legal aid is too freely granted and have suggested that there should be a facility for reclaiming the cost of legal aid from persons who are convicted. That is not however yet part of our law.
Italy	The access is granted free of charge. The copy of the materials (paper, electronic copies, audio or video files costs a lot and they are free of charge only in case the accused person is entitled to and has already be granted the scheme of legal aid
Latvia	Free of charge.
Lithuania	The access itself is free of charge. If a suspect or an accused person asks for a copy of any particular material, then he/she is obliged to pay for it.

Luxembourg	Access and delivery of a copy are free of charges and costs
Malta	Free of charge save expert documentation costs
Poland	The access to materials of criminal proceedings – understood as a possibility to review documents which have been gathered in files, to make own notes or own copies of such documents and so on – is free of charge. If an entitled person (a suspect, an accused, a defence lawyer, a proxy or a statutory representative or even other entitled subject) lodges a motion for delivery him or her by the competent authority of the criminal proceedings copies or certified copies of documents included in files of criminal proceedings, such copies or certified copies aren't free of charge. Only the parties of the criminal proceedings (i.e. also a suspect or an accused) are entitled to obtain, on their demand, a one free of charge certified copy of every decision in criminal proceedings which directly refers to such parties. The certified copy of a decision is delivered together with its written reasons if such reasons were made (Article 157 § 1 CCP). According to the Ordinance of the Minister of Justice of the 2nd of June, 2003 concerning the level of charges for delivery of copies of documents and certified copies from files of criminal cases (Journal of Laws of the 24th of June, 2003, No. 107, item 1006), the charge for delivery of copies of documents is 1 PLN (i.e. about 0,25€) for one page of a copy and the charge for delivery of certified copies from files of a criminal case is 6 PLN (i.e. about 1,50€) for each page.
Portugal	Only partially with costs to the defence.
Romania	
Slovakia	Access itself is free of charge, making duplicates (paper copies) might be charged.
Slovenia	The access is free. Copies of the material from the court file should be paid at a certain tariff set by the Ministry of Justice.
Spain	Is free of charge.
Sweden	Access to material is granted free of charge.
The Netherlands	Files are always provided free of charge by either the prosecutor or the court's clerk.
UK	**England and Wales** See the answer to (a).
	Scotland Material is provided free of charge.
	Northern Ireland First copy free and duplicates will be charged for.

Question 5. ***What is the situation in your Member State – covering both national law and national practice - with respect to the right of access to the materials of the case regarding:*** *(a) access itself to the material?*	
Austria	See question 4.
Belgium	See previous answers
Bulgaria	The answer again will be divided in two parts. The first part will concern detention by the prosecutor and detention on remand by the court as a measure to prevent reoffending or absconding from justice (please see my answer to Question 2 (b) above). As regards these two types of detention, the right to access to the materials of the case in the meaning of Article 7.1 of the Directive *is not* explicitly provided for by national law. *However, this right is guaranteed and exercised in practice with no exceptions whatsoever. Access is provided to all the materials of the case, which allows challenging effectively the lawfulness of detention.* Anyway, in my view, in order to reinforce the significance of the right to access to the materials of the case, where a person is arrested or detained, it is necessary to amend CPC by introducing the relevant rules to transpose the requirements of the Directive.. The second part of the answer is to cover police arrest (please see my answer to Question 2 (b) above). As regards police arrest, the right to access to the materials of the case in the meaning of Article 7.1 of the Directive *is neither provided for by national law, nor respected in practice.* This is a serious flaw and a speedy amendment of MIA is needed in order to make law and practice corresponding to the requirements of the Directive.
Croatia	See question 4.
Cyprus	According to the Rights of Persons who are Arrested and Detained Law (L. 163(I)/2005) and Article 7 (1) of the Criminal Procedure Law Cap 155, the person arrested and detained or his/her lawyer has the right to access essential documents (copy of the arrest and detention warrant, copy of the application and the affidavit on the basis of which the warrant was issued) which they need to challenge the legality of the arrest or detention. If the case goes to Court, the arrested person or his/her lawyer has the right to have access to the material evidence and documents gathered during the investigation of the case concerning the criminal offence brought before the Court. This provision is also included in the document titled “Rights of a Detained Person”.
Czech Republic	The fact that a person is detained does not trigger the right to access the file. The “dividing line” is whether the person is considered a suspect or an accused. See answers to the question 4. Only the accused may be taken to custody and the accused has a right to inspect the file. The suspect may be detained, but he has to be within 48 hours handed over to the court which decides in another 24 hours about the custody. In this case, the suspect does not have a proper access to the case-file. The CCP does not specifically regulate this issue. In practice the suspect is often informed during the custody hearing by the judge about the content of the motion of the public prosecutor to take him into custody or his defence lawyer receives the prosecutor´s written motion on the spot during the court, but not in advance. Such procedure makes the defence indeed difficult.
Estonia	According to § 341(2) of CCP, suspects have the right to request access to any evidence which is essential in order to discuss whether an arrest warrant is justified and for contesting detention and taking into custody in court. However, the granting access is subject to a decision by the prosecutor, and the prosecution has a wide discretion to refuse access -- according to § 341(3) of CCP, a prosecutor may make a ruling on refusal to enable access to evidence if this may significantly damage the rights of another person or if this may damage the criminal proceedings. This clause is applicable to all materials, incl materials related to justifying and contesting detention (!). In practice, this clause has also been used to deny access to detention-related materials.

	It is my opinion that the relevant regulation which (a) subjects access to a decision by the prosecutor, and (b) gives the prosecutor wide discretion to refuse access, is nothing short of a clear and severe violation of Article 7 of the Directive.
Finland	Varies a lot. Usually before or even at the first detention hearing there is very little material the suspect is allowed to acquaint himself with. Before the changes in law in 2014 it was usually enough that the head of investigation told the court – obviously the head of investigation being liable while in office – why probable causes exist for detention. Nowadays this is not enough, but some concrete evidence, such as extracts from interrogations etc. is or at least should be required. Implementation of the Directive was criticised especially in this regard in the preparation phase by the Finnish Bar Association. Also inter alia the Helsinki Court of Appeal expressed its concerns since the possibly defect implementation can lead to edition request at the appellate level, if proper access to material is not provided at the district court level when dealing with detention requests. The current situation is therefore still at a preliminary phase in terms of the implementation of the Directive and it remains to be seen how the jurisprudence evolves and if changes in law need to be made.
France	The rules are the same (see above).
Germany	
Greece	Access to the material is provided to the defendant or his empowered counsel. In practice, the file remains at the Prosecutor's Office, even when the defendant is in detention or prison. Usually, the counsel receives copies of the file and informs the defendant.
Hungary	At the time of finishing the investigation, the accused may have access to all materials of the investigation. In case of arrest/detention, at the time of arrest of detention the materials underlying the action shall be provided to the suspect and legal counsel.
Ireland	As alluded to above the extent to which materials are put before a suspected person during their detention varies from case to case. Increasingly progressive police officers understand the wisdom of the fullest disclosure at the earliest time. However older policemen used to the formerly prevailing practice are inclined to retain material. A particular frustration for defence lawyers is that in interviews accused persons are confronted with selective quotations from the statements of other witnesses, potentially eyewitnesses etc. Police put the most damaging parts of the statement to the accused person without perhaps adding in detail that would assist them for instance that the purported eyewitness had been intoxicated, or had expressed doubts etc. etc.
Italy	Every person deprived of liberty id entitled to have access to the material and so for the lawyers also.
Latvia	In law the access to materials that substantiate the detention is granted, but in national practice it is not.
Lithuania	The suspect (or his/her lawyer) has a right to access the case material that was presented to the judge deciding upon the detention of the particular suspect.
Luxembourg	None of these documents are available before the end of the first interrogation. During the first interrogation, the investigating judge takes the decision on preventive detention. So at this precise moment the lawyer or the suspected person are not in possession of above mentioned documents. This regrettable situation is contrary to the spirit and the text of the directive.
Malta	Granted
Poland	There is no regulation of the Polish Code of Criminal Proceedings of 1997 clearly giving a detainee (who is not detained on the basis of a European Arrest Warrant) the right of access to materials of the criminal proceedings understood as a possibility to review files of the proceedings and to prepare (or to obtain) their copies. However a competent authority (above all police) shall hand over a detainee a copy of minutes of detention. It seems that provisions of the Article 156 §1 and §2 CCP – in the scope they create a possibility of access to files of proceedings before the court and during preparatory

	proceedings exceptionally also for 'other persons' might be a legal basis to the access to essential documents of such files related to the specific case also for detained persons (if it may have the impact on challenging effectively the detention). Neither the Article 244 § 2 and § 5 CCP nor a model letter of rights of a detainee in criminal proceedings present expressis verbis the right of such detainee of access to materials of criminal case (to review such materials). (Proper regulation of the Code of Criminal Proceedings – the Article 244 §3 – and model letter of rights present the right to receive the copy of the minutes of detention). The practice of making possible for a detainee to have the access to other materials of files of the criminal case (concerning his or her situation) is unknown. In turn, the Article 607l §4 CCP (concerning a detention on the basis of a European Arrest Warrant) as well as a model letter of rights for persons detained on the basis of a European Arrest Warrant (presented in the Ordinance of the Minister of Justice of the 11th of June, 2015 - Journal of Laws of 2015, item 874) include and clearly inform about the right of the mentioned detainee to receive a copy of the minutes of detention as well as about the right to review the files of the criminal proceedings in the scope referring to reasons of detention. Undoubtedly such possibility enhances a standard of procedural safeguard to challenge the detention more effectively. The practice in Poland respects this standard. Due to the Article 156 §5a CCP, a suspect and his or her defence lawyer - in case of lodging a motion for application or extension of the temporary arrest in the course of preparatory proceedings - shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion. This regulation – which is quite new one in the Polish Code of Criminal Proceedings of 1997 (it's in force from the 2nd of June 2014) changed seriously the practice towards the respect of the European Union standard in this field.
Portugal	The access to the materials, in practice, is several times not provided appropriately (limited during the questioning).
Romania	
Slovakia	Both accused and his defence counsel have the right to access to files of the investigation, including evidence and data collected during investigation, except for the voting report and those sections of the report that contain data on the identity of an undercover agent. They have the right to get copy of reports (including operation he was not informed about), to make excerpts and notes, and to have duplicates of the files and the parts thereof. (Sec 69 CCP)
Slovenia	Access to the materials is granted.
Spain	See previous answers. We have a lot of problems in Police Stations regarding this.
Sweden	In addition to the material of the investigation the suspected person is entitled to, as outlined under Question 4, he or she has an unrestricted right of access to the information upon which the decision of arrest or detention is based. The answers below refer to this right. A general comment that shall be made on this issue is that the right of access to the material as set out in Article 7.1 of the Directive has been implemented into Swedish law as a right of access to information. The relative vagueness of the term information may impede a consistent practice on how the relevant material (e.g. documents, confrontation material, audio and video recordings, see recital 30) shall be presented to the suspect. *(a) access to the material itself* There is no right to receive a copy of the relevant documents. The information of relevance to the decision of arrest or detention can be made available to the suspected person either orally or in writing. <u>Access to information of relevance to an arrest order</u> In practice, the suspected person may be provided with the relevant information, only upon request. If a request is made, the prosecutor shall provide the police with the information to be forwarded to the suspected person. <u>Access to information of relevance to a decision of detention</u> As outlined under Question 2, a decision of arrest shall be followed by a detention hearing at court. The hearing must not be held more than four days after the apprehension or the execution of arrest. At the detention hearing the prosecutor shall present the information upon which the request for detention is based. Before the hearing the lawyer is normally provided with a copy of a compilation of

	investigation material containing documents of relevance to the matter. This compilation is also submitted to the court. Additional circumstances can be, and are not rarely, presented orally at the hearing. A court decision on detention contains the suspected offence and the legal grounds for the decision.
The Netherlands	Article 59a and 60 NCCP provide that in case a suspect is being detained or put in pre-trial detention he should be brought before an examining judge within 3 days and 15 hours, beginning at the moment of his arrest, at the latest. Prior to these proceedings before the examining judge the lawyer receives (part of) the file that should enable him to challenge the rightfulness of the detention and to verify whether there are grounds and a serious suspicion that justifies a remand in custody (inbewaringstelling) or-dered by the examining judge. The file that is provided includes information about the suspects judicial record (justitiele documentatie). As the examining judge needs a copy to enable him to take a decision, the lawyer receives a copy as well. This copy is only delivered to the lawyer a few hours prior to the start of the in chamber hearing of the examining judge. As a result the defense counsel does not have sufficient time to actually study the file, but he has to go through the file very quickly, scanning the most relevant parts. After having received this file the lawyer does not always have the opportunity to discuss the file with his client prior to the in chamber hearing with the examining judge. This is an important fault as often this is the first time that the lawyer is able to take notice of the evidence the police has collected and there is something at stake: the examining judge may order a remand in custody of 14 days. The importance of this is further emphasized by the fact that a suspect who gets a remand in custody mostly will be held in pre-trial detention until the first public court hearing, which will be scheduled about three months later. Again also in this stage it is the lawyer who should provide his client with a copy. The examining judge only provides one copy and not an additional one for the suspect.
UK	**<u>England and Wales</u>** The detainee's legal representative and his appropriate adult (if applicable) must be permitted to inspect the custody record as soon as practicable after their arrival at the station and at any other time whilst the person is detained on request. Access must be arranged with the custody officer and may not reasonably interfere with the custody officer's duties. [§2.4] If the person leaves police detention or is taken before a court, the person, their legal representative or appropriate adult (if applicable) shall be given a copy of the custody record as soon as practicable. They remain entitled to obtain a copy for 12 months after release. [C§2.4A; H§2.6] The information provided in the custody record shall include information about the circumstances and reasons for the detainee's arrest as well as the grounds for each authorisation of detention. [§2.4] The detainee or his legal representative have the right to access documents and materials which are essential to effectively challenge the lawfulness of his arrest and detention. Documents and materials will be essential if they are capable of undermining the reasons and grounds which make the detainee's arrest and detention necessary. The decision about which materials must be made available rests with the custody officer in consultation with the investigating officer. The custody record should reflect the fact that documents or materials have been made available and when. The investigating officer should make a separate note of what documents and materials have been made available and the form in which they have been made available. [§3.4(b)] The way in which documents and materials are made available is a matter for the investigating officer to determine on a case by case basis having regard to the nature and volume of the documents and materials involved. They may be made available by supplying a copy or by providing supervised access to view. Where view only access is provided, it will be necessary to demonstrate that sufficient time is allowed for the suspect and solicitor to view and consider the documents and materials in question. [Note 3ZA(b)] For detainees who require translation services, written translations, oral translation and oral summaries of essential documents shall be provided in a language the detainee understands. [§13.10B] The practice to be followed including the timings for the creation and provision of translation is set out in Annex M to Code C and Annex K to Code H. Broadly, translation should be created and provided as soon as practicable; interview records should be created contemporaneously.

	The above entitlements apply where the police apply to a magistrates' court for a warrant of further detention to extend the detention without charge of a person arrested for an indictable offence or make a subsequent application to extend or further extend such a warrant. [C§15.7A; H§14.4-4A] Neither Code of Practice C nor Code of Practice H address whether access is granted free of charge.
	Scotland Information relating to detention and arrest is recorded in detention and arrest form, which are disclosed in accordance with the principles set out above.
	Northern Ireland

(b) the time when it is provided?	
Austria	See question 4.
Belgium	See previous answers
Bulgaria	Where provided, access to the materials of the case is granted in due time and as long as necessary in order to challenge effectively the lawfulness of detention.
Croatia	See question 4.
Cyprus	Every member of the Police that arrests any person, provides to that person, right after his/her arrest, with a document (Rights of Detained Persons), written in a language he/she understands. According to this document the person is informed about the rights inter alia about his/her right of access to the material of the case.
Czech Republic	See the previous answer.
Estonia	There is no specific time provided in the law when such access may be granted. The only rule on timing is § 341(1) of CCP, which provides that access must be granted 'at the latest' after the close of pre-trial investigation. However, from the context and meaning of § 341(2) of CCP, one can almost certainly conclude that access must be granted at such moment which enables the suspect/accused and defence to submit arguments to the judge deciding upon the application of detention, or to prepare and submit a challenge against the decision.
Finland	See previous answer. All material is usually given only when the pre-trial investigation phase has ended.
France	As above mentionned the same rules are applicable.
Germany	
Greece	During the adduction the accused is given the ability to receive copies of the file and a time limit to apologize.
Hungary	See above. Before the decision of the court on detention.
Ireland	Detentions for the purpose of investigation in Ireland can be quite lengthy including up to 7 days in organised crime and drug cases. The first 48 hours are authorised by the police themselves. Thereafter application is made to a Court for an Order extending the period of detention. As a matter of tactics the authorities will put questions in the final interview of the 48-hour portion which they say requires them to make further enquiries to vouch the answers given e.g. alibi etc. This is used as a method of justifying an extension. Often the most damning material is withheld until the final interview of a seven-day detention to maximise the possibility that an accused will commit themselves to a patently untrue but exculpatory version which can be undermined.
Italy	There is not a time limit. If there is a warrant issued by the judge, the access is granted immediately and subject only to the opening hours of the office.
Latvia	Access to the material is granted only after completion of a pre-trial criminal proceedings or when the case is closed.
Lithuania	It is provided before the decision making on the detention of the suspect or at any other moment of the pre-trial investigation.
Luxembourg	After the first interrogation at the same time when access to the rest of the case file is granted.
Malta	Upon request
Poland	If we consider the issue of the access to certain materials of a criminal case of persons detained on the basis of a European Arrest Warrant, the adequate regulations of the Code of Criminal Proceedings (Articles 244 and 607l) as well as the model letter of rights don't determine the time of making such access possible. The nature of the procedural situation of the mentioned detainee demands, surely, that such access ought to be prompt. General observations of some cases in practice lead to conclusion that the right of access to materials of a criminal case is exercised without undue delay.

	Regulation of the Article 156 §5a CCP expressively requires that a suspect and his or her defence lawyer - in case of lodging a motion for application or extension of the temporary arrest in the course of preparatory proceedings - shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion. There are no signals from practice that the competent criminal justice bodies infringe this statutory standard concerning the time.
Portugal	The access to the materials, in practice, sometimes is not granted in a due time.
Romania	
Slovakia	Information is provided upon request. Should the access to files cause delays in the criminal proceeding, the law enforcement bodies are entitled to limit the access to the files by an adequate period of time.
Slovenia	Access to materials shall be granted by police in case that a detention of a suspect lasts more than six hours (Article 157/6) only for the purpose of an appeal against detention. However, in practice, during the police detention/arrest the suspect is not given the possibility to access documents related to the specific case in the possession of the police.
Spain	Promptly in Court premises.
Sweden	There are no explicit provisions in Swedish law concerning the right of access in due time, as set out by the Directive. As access to the information upon which the arrest order is based, in practice is depending on a request from the suspected person, it can be questioned whether the Swedish practice fully meets the requirements of the directive in this regard. The compilation of documents put together before the detention hearing is normally provided to the lawyer within short notice; usually the same day as the hearing and rather often just before the hearing starts. With these limited timeframes, and as additional information usually is presented during the hearing, there is doubt that the suspected person is allowed an effective exercise of the right to challenge the lawfulness of the deprivation of liberty.
The Netherlands	See answer to (a) above.
UK	**England and Wales** See the answer to (a) above.
	Scotland In accordance with the timescales set out above.
	Northern Ireland

(c) the quality and quantity of material provided?	
Austria	See question 4.
Belgium	See previous answers
Bulgaria	Access is provided to ***all*** the original materials of the case. The accused person and her/his lawyer are allowed to take notes on the materials without any limitations.
Croatia	See question 4.
Cyprus	According to article 7(1) of the Criminal Procedure Law (Capital 155), any person who is arrested and detained or his/her lawyer, is entitled to be provided in time access to essential documents, which are relative to the case and are in the possession of prosecution and which are necessary for the effective challenge of the lawfulness of the arrest and detention. For the purpose of this article, "essential documents" are considered: a copy of the arrest and detention warrant, a copy of the application and the affidavit on the basis of which the warrant was issued. In my opinion the “essential documents” might not be enough to challenge the lawfulness of the arrest. Any other document in the investigation file which is deemed essential should be available to the defence lawyer. According to the ECHR case law (see inter alia Nikolova v. Bulgaria (2001) 31 EHRR 3) equality of arms requires that the detainee be given disclosure of all relevant evidence in the possession of the authorities. In case the prosecution denies access to those documents to the suspect or accused or his/her lawyer, the Court should be empowered to grant an order of disclosure after perusal of the documents if necessary.
Czech Republic	See answer to (a).
Estonia	According to the law, 'any evidence which is essential in order to discuss whether an arrest warrant is justified and for contesting detention' must be made available. However, due to the fact that the prosecution has wide discretion to refuse access, it is effectively up to the prosecutor to decide what materials, if any, are made available.
Finland	See answer in “when not deprived of liberty”.
France	As above mentionned the same rules are applicable.
Germany	
Greece	Copies of the whole file are provided, except for the occasions under par. 3 of Article 101 of the Greek Code of Criminal Proceedings, as previously described in detail.
Hungary	See above.
Ireland	This varies greatly. Generally if the authorities have a very strong case they are quite comfortable in making full disclosure during the interview period. If conversely their case will depend on securing a confession from the suspect they are inclined to withhold information rather than volunteer it.
Italy	everything
Latvia	After completion of a pre-trial criminal proceedings or when the case is closed – fully, before then – nothing is provided.
Lithuania	The quality and quantity of material provided depends on the prosecutor whose aim is to prove to a pre-trial investigation judge or to a judge of the higher instance that the particular suspect should be detained.
Luxembourg	Depends on the work of the authorities in charge of the file.
Malta	As to availability at the time of request
Poland	Documents from files of the criminal proceedings available for a detainee are minutes of detention. Documents from files available to detainees on the basis of a European Arrest Warrant must concern the reasons of detention. For sure such documents are minutes of detention but in the collection of such documents could be included also others documents (the quality of such documents shall be determined as essential). Documents available for suspects and their defence lawyers in the course of preparatory proceedings - in case of lodging a motion for application or extension of the temporary arrest by the public prosecutor in the course of preparatory proceedings – should be materials including evidences presented in the aforementioned motion. All the mentioned documents should be called as essential because of their character (though the law-maker doesn’t use the word ‘essential’). Quantity of materials of which a proper person deprived of liberty exercises a right of access to them isn’t

	determined by the law-maker. (However it should be mentioned that a detainee or a detainee on basis of a European Arrest Warrant are entitled to receive ex officio one copy of minutes of detention – see the Article 244 § 3 CCP as well as the Article 607l in relation with the Article 244 CCP). Suspects and accused persons – each of them – receive, on their demand, one certified copy of every decision. Undoubtedly, quantity of available materials should be necessary to safeguard a concrete person his or her procedural rights (right to challenge a decision, right to defence). The quality (technical one) of available materials shall be appropriate – persons shall exercise their right of access to information having possibility to receive and review documents and other materials which are readable. Unfortunately in Poland the latter demand not always is fulfilled in a satisfying way.
Portugal	Several times it is difficult to access to the materials, because it is a profusion of materials and it is necessary to consult it at the court of justice.
Romania	
Slovakia	Complete files of the investigation, including evidence and data collected during investigation, except for the voting report and those sections of the report that contain data on the identity of an undercover agent. Undisclosed materials, bank secret, commercial secret, tax secret, post and telecommunication secrets must be respected. In pre-trial stage the judge may refuse the accused or his lawyer to access the whole content of the file in the proceeding on detention, apart from the information related to the facts and evidence relevant for the decision on the detention. This situation might appear of the access to the whole file could threat the purpose of the criminal investigation.
Slovenia	All the evidentiary material is provided in the form (i.e. quality and quantity) that the court has it too.
Spain	See previous answers
Sweden	The compilation of documents handed to the lawyer in connection to the detention hearing generally consists of copies of documents from the investigation, e.g. police reports, transcripts of interrogations, medical reports etc. In some cases, often in larger-scale investigations, only a memorandum with a summary of particular circumstances of the investigation is provided to the lawyer.
The Netherlands	Usually a hard copy of the file is delivered to the lawyer who is supposed to provide his client with a copy. Often the file has been organized by the police. The police often makes an index and a summary of the findings and their conclusions.
UK	**England and Wales** See the answer to (a) above.
	Scotland As above.
	Northern Ireland

(d) the way in which the access is granted (e.g. paper format, electronic format)?	
Austria	See question 4.
Belgium	See previous answers
Bulgaria	Access is granted in paper format. Access is also granted to all pieces of material evidence collected during the proceedings before detention.
Croatia	See question 4.
Cyprus	The person arrested or his/her lawyer is granted a copy of the documents mentioned above in paper format.
Czech Republic	See answer to the question 4(d).
Estonia	There is no provision on the way access to materials is granted before the close of pre-trial investigation. Therefore, it is up to the prosecutor to decide, and it can be done in paper format or electronic format.
Finland	See answer in "when not deprived of liberty".
France	As above mentionned the same rules are applicable.
Germany	
Greece	It depends on the evidence. For example, the documents are obtained in hard copy with the diligence of the accused or his/her counsel.
Hungary	Paper.
Ireland	Most information communicated to a suspect during his period in detention is communicated orally. Rarely are exhibit materials handed in hard form to the suspect. A suspect does not for instance they have the opportunity of reviewing CCTV footage alone with their adviser.
Italy	both
Latvia	After completion of a pre-trial criminal proceedings – in paper format as a copy, when the case is closed – person is entitled to get acquainted with the material, but a copy is not issued.
Lithuania	Paper format.
Luxembourg	Paper format
Malta	As above
Poland	It's worthy to note, above all, that in the Polish Code of Criminal Proceedings there are no formal obstacles to grant the access to the materials of the criminal proceedings in electronic format (no provision states that such access is excluded). However, nowadays the digitalization of files of criminal proceedings doesn't exist as the standard resulting from regulations of law concerning criminal proceedings. So documents in files of criminal case have the paper format. Interpretation of the provisions of the Article 156 CCP and the mentioned reality in the field of preparing files of the proceedings in criminal cases in Poland lead to the conclusion that materials of the criminal cases are made available by the competent authorities generally in paper formats. The common practical standard is that the entitled persons have the access to paper documents from the files of the proceedings before the court (as well as – in a proper scope – to paper documents from the files of the preparatory proceedings) and they can prepare their own copies of such documents (preparation of copies includes also preparation of digital copies). However if the activities of criminal proceedings are recorded, persons having a right of access to the files of the proceedings (to materials of a criminal case) shall have also possibility of access not only to paper minutes of such activities but equally to video and audio recordings of the activities (which are attachments to the minutes). The known practice in Poland generally respects this standard (obviously if it is technically possible in places where the right of access to materials is exercised).
Portugal	The access to the material is granted in paper format, but not all the materials.
Romania	
Slovakia	Paper format.
Slovenia	The access is granted in paper format.

Spain	See previous answer.
Sweden	When granted, material is generally provided in paper format. The Swedish prosecution authority and the courts also have routines for sending the material via e-mail.
The Netherlands	See (c) above.
UK	**<u>England and Wales</u>** See the answer to (a) above.
	<u>Scotland</u> As above.
	<u>Northern Ireland</u>

(e) whether the access is granted to the lawyer or the suspected person or to both (if requested)?	
Austria	See question 4.
Belgium	See previous answers
Bulgaria	Access is granted to both.
Croatia	Access is granted to both.
Cyprus	As provided by article 7(1) of the Criminal Procedure Law the documents are granted to any person who is arrested and detained or his/her lawyer.
Czech Republic	See answer to the question 4(e).
Estonia	Access is granted to both the defence counsel and the suspected person if requested.
Finland	See answer in "when not deprived of liberty".
France	As above mentionned the same rules are applicable.
Germany	
Greece	Both.
Hungary	Both.
Ireland	The materials are generally granted to the lawyer and the suspected person at the same time in the police station.
Italy	both. even if it is not always possible that an arrested person can go to the registar in order to read the papers or to get copies, since the material I kept by the secretariat of the judge
Latvia	After completion of a pre-trial criminal proceedings or when the case is closed – to both, before then – to nobody.
Lithuania	If the suspect who has been detained has a lawyer, the access is granted to the lawyer.
Luxembourg	To the lawyer and perhaps to the suspected person on his request
Malta	Both
Poland	The access either to files of criminal proceedings before the court or to files of preparatory proceedings is available to suspects, their defence lawyers, their proxies and their statutory representatives. On the grounds of the Article 156 § 5 CCP, the right of access to files in the course of preparatory proceedings can be exercised by the parties (so, inter alia, by a suspect) also after the conclusion of preparatory proceedings. (In the mentioned context, the law-maker doesn't enumerate clearly other subjects like a suspect's defence lawyers, his or her proxies, his or her statutory representatives). In turn, on the basis of the Article 156 § 5a CCP if in the course of preparatory proceedings a motion to apply or to extend the temporary arrest is lodged, a suspect and his or her defence lawyer shall have a prompt access to the files of the criminal case in the area of materials including evidences presented in the aforementioned motion. Provisions of the Article 156 § 1 and §2 CCP present the possibility to entitle other persons to the access to files (for instance detainees). However they are silent about proxies or statutory representatives of such persons. Taking into account general civil law principles and criminal procedure provisions (Article 87 § 2 CCP), statutory representatives or proxies (of, for instance, detainees) also could be entitled to the access to files of the criminal case. It could be added that – in accordance with the Article 156 § 2 CCP - on the request of a suspect (an accused person) or his or her defence lawyer it shall be delivered to them copies of documents from the files of the criminal case (such copies are delivered for a payment).
Portugal	The access is granted to the lawyer and not always to the suspected.
Romania	
Slovakia	Both.
Slovenia	The access is granted to both.
Spain	In Police Station only to the lawyer. In Court premises, to both.
Sweden	Access is primarily granted to the lawyer.
The Netherlands	
UK	**England and Wales**

	See the answer to (a) above.
	Scotland As above.
	Northern Ireland

(f) whether access is granted free of charge? if not or only partially, which costs arise?	
Austria	See question 4. Free of charge regarding the part of the file necessary for determining the suspicions and the reasons for detention until the first hearing.
Belgium	See previous answers
Bulgaria	Access is granted free of charge. This is not explicitly provided for by the law. Thus, the importance of this requirement of the Directive is somewhat underestimated at the normative level. In my view, in order to reinforce the significance of the "free of charge" requirement, it is necessary to amend CPC by introducing the relevant rule. Anyway, in practice access is always provided free of charge.
Croatia	See question 4.
Cyprus	The relevant documents (a copy of the arrest and detention warrant, a copy of the application and the affidavit on the basis of which the warrant was issued.) are given free of charge. Additionally, according to the Law that provides for the Interpretation and Translation during the Criminal Proceedings (L.18(I)/2014), if the suspect or accused person does not understand the language of the criminal proceedings the competent authority ensures that, within a reasonable period of time, the accused or suspect is provided with written translation of all documents that are essential to ensure that they are able to exercise their right to defense and to safeguard the fairness of the proceedings. The Republic of Cyprus meets all costs of the translation provided by the Law.
Czech Republic	See answer to the question 4(f).
Estonia	Access is granted free of charge.
Finland	See answer in "when not deprived of liberty".
France	As above mentionned the same rules are applicable.
Germany	
Greece	Never is access given free of charge, even if the accused has a low income. The cost depends on many factors (e.g. court, the size of the file, etc.). Indicatively, in Athens, the cost of obtaining copies is 0,08 Euros per one-sided page. Usually photocopies are made by individuals operating in the courts. However, the counsel may study the file printed in the department where it is kept without obtaining copies (par. 1, Article 101 of the Greek Code of Criminal Proceedings.
Hungary	Free.
Ireland	No charge attaches to disclosure of information whether in custody or at a later stage in the proceedings.
Italy	
Latvia	Free of charge.
Lithuania	The access itself is free of charge. If the suspect or the accused person asks for the copy of the particular material, then he/she is obliged to pay for it.
Luxembourg	Access free of charge
Malta	As in answer to Question 4 (f)
Poland	The access to materials of criminal proceedings – understood as a possibility to review documents which have been gathered in files of criminal case, to make own notes or own copies of such documents and so on – is free of charge. If an entitled person (a suspect, an accused, a defence lawyer, a proxy or a statutory representative or even other entitled subject) lodges a motion for delivery him or her by the competent authority of the criminal proceedings copies or certified copies of documents included in files of criminal proceedings, such copies or certified copies aren't free of charge (interested persons shall pay for them established rates). Only the parties of the criminal proceedings (i.e. also a suspect or an accused) are entitled to obtain, on their demand, a one free of charge certified copy of every decision in criminal proceedings which directly refers to such parties. The certified copy of a decision is delivered together with its written reasons if such reasons were made (Article 157 § 1 CCP). According to the Ordinance of the Minister of Justice of the 2nd of June, 2003 concerning the level of charges for delivery of copies of documents

	and certified copies from files of criminal cases (Journal of Laws of the 24th of June, 2003, No. 107, item 1006), the charge for delivery of copies of documents is 1 PLN (i.e. about 0,25€) for one page of a copy and the charge for delivery of certified copies from files of a criminal case is 6 PLN (i.e. about 1,50€) for each page. In the mentioned area, the practice in Poland coincides with legal standards. The Article 244 § 3 CCP states, among others, about a delivery to a detainee a copy of minutes of detention. This provision doesn't precise whether such copy of minutes is delivered to a detainee for free or not. In practice it's delivered for free. Due to the Article 156 § 2 CCP, on the request of a suspect (an accused person) or his or her defence lawyer it shall be delivered to them copies of documents from the files of a criminal case (such copies are delivered for a charge).
Portugal	Yes.
Romania	
Slovakia	Access itself is free of charge, making duplicates (paper copies) is charged.
Slovenia	The access is free. Copies of the material from the court file should be paid at a certain tariff set by the Ministry of Justice.
Spain	Free
Sweden	Access is granted free of charge.
The Netherlands	See (c) above.
UK	**England and Wales** See the answer to (a) above.
	Scotland Access is granted free of charge.
	Northern Ireland

Question 6. ***What is the situation in your Member State – covering both national law and national practice - with respect to the derogation from the right of access to the materials of the case regarding:*** *(a) the grounds on which the derogation is granted (see (a) and (b) above)?*	
Austria	A derogation to the right of access to the file is possible (§ 51(2) StPO) - if such access may lead to a serious harm to another person (regarding life, body and freedom); access may be limited to the name and any document that may allow to identify the third person; - until the end of the investigation if the immediate access may be a serious threat to the purpose of the investigation, which must be established on the basis of specific circumstances.
Belgium	Derogation only (art. 61ter, § 3, Belgian criminal procedure Code) : “if the investigation requires it” “if the access to the investigation file would present a danger for the persons or for their private life”
Bulgaria	As pointed out in the answer to Question 4 (c) above, Bulgarian law *does not provide for the derogations in the meaning of Article 7.4* of the Directive and they never apply in practice. Access is granted to ***all*** the materials collected with no limitations whatsoever, both in the pre-trial and the trial stage of proceedings.
Croatia	A derogation to the right of acces to the materials is possible: - if such access may lead to a serious harm to the purpose of investigation, - if such access may lead to endanger of another person health or life: - if such access may lead to endanger of large-scale property.
Cyprus	According to article 7(4) of the Criminal Procedure Law (Capital 155) If the right to fair trial is not prejudiced, access to part of the statements or documents 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 refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Republic.
Czech Republic	See answer to the question 4(a).
Estonia	According to § 341(3) of CCP, a prosecutor may make a ruling on refusal to enable access to evidence if this may significantly damage the rights of another person or if this may damage the criminal proceedings. Such grounds are obviously below the standard provided by Article 7 of the Directive. NB! These grounds are also applicable to materials related to challenging detention.
Finland	At the pre-trial investigation phase, the head of investigation makes the decision. If access is refused, a decision needs to be made, including the grounds of not allowing access. This decision can be appealed to the Helsinki Administrative Court, but this is not an effective remedy already due to the fact that a decision from the Administrative Court will take ca 1 year to get (and that decision can also be appealed even by the investigative authority to the Supreme Administrative Court), and secondly due to the fact that the legal provisions applied are different from those applied when dealing with a case in ordinary courts. We have had rulings in which the Administrative Court states that the investigating authority has not breached the Act on the Openness of Government Activities and that ensuring a fair trial is the responsibility of the court dealing with the principal (criminal) case. A possibility to obtain information exists in theory by way of an edition request, but this kind of a request would require the person asking for documents to be able to specify which document he would like to have and what influence it could have in his case. As can be understood, it’s not very easy to do so if you don’t know what kind of material the investigative authority has in its possession.
France	As no real access to the “real file” is granted, no dergation is scheduled.
Germany	

Greece	Under par. 3 of Article 101 of the Greek Code of Criminal Proceedings, since the right to a fair trial is not affected, no material that can endanger fundamental rights of others or public national interest is provided. The defendant may, however, object through his counsel.
Hungary	In case of finishing the investigation, all materials are accessible. Derogation may only apply to national state secret.
Ireland	During periods in custody there is no entitlement currently understood to access to the full (or any) case materials and accordingly an issue of derogation does not arise. The directive will undoubtedly lead to further litigation in Ireland about the extent to which information should be released. Once the case proceeds to Court, the Court will direct that the particulars of evidence be provided to the defendant. The prosecution also have an independent duty of disclosure. If the prosecution have material which is relevant but which they claim should be withheld on grounds of national security or similar, they must seek a ruling of the Court to that effect. The usual privileges sought are, informer privilege not disclosing the source of information received by the police and national security.
Italy	In specific cases, a part of the witnesses can be covered, especially for the names. There is note a rule about it. In practice it is believed admissible for the safety of the witness or the secrecy of linked investigations
Latvia	The material contains state secret.
Lithuania	As it was mentioned above, the prosecutor can refuse the suspect or/and his/her lawyer the access to the case material under the argument that getting familiar with the case material can infringe the success of the pre-trial investigation. It is obvious that such argument is simply vague and prejudices the right to a fair trial.
Luxembourg	mostly based on an argumentation similar to (b) above. But the decision not to grant access may be subject to appeal at the chamber of council of appeal
Malta	Save (b)
Poland	According to the Article 156 § 4 CCP the limitation of the access to files of a criminal case in the proceedings before the court is exceptionally possible if there appears a danger to reveal classified information (confidential or strict confidential as defined in the act of the 5th of August 2010 on the protection of classified information – Journal of Laws of the 1st of October, 2010, No. 182, item 1228 with subsequent amendment). However the Article 156 § 4 CCP doesn't create a basis for derogation from the right of access to the materials of the case which an accused or other persons are entitled to but it solely creates a basis for conditions and circumstances under which such right could be exercised. So, the right of access to materials of the case (reviewing documents collected in the files and making their copies) shall be exercised with the respect to conditions and demands established by the president of court or by the court (for instance the access to the materials of the case will be possible only in the secret office of the court). The mentioned conditions and demands are determined in the order of the president of the court or in the decision of the court. Such order or such decision cannot be challenged by the complaint. Generally, there exists a prohibition to deliver to an entitled person (e.g. an accused person) copies of materials certified by the competent judicial authority. The exception from the mentioned prohibition is for example a situation described in the Article 157 § 2 CCP. Due to this regulation, if there is a decision to hear a criminal case at a non-public sitting made on the grounds of the important interest of the state, entitled persons (e.g. an accused person) shall receive just one copy of the judgment concluding proceedings without its reasons. Another exception is found in the Article 128 § 1 CCP which states that decisions and orders are delivered in certified copies if the law requires their delivery. In turn, the Article 156 § 5 CCP states that entitled persons (e.g. suspects) have the right of access to materials of the criminal case in preparatory proceedings (also to make their copies) if there is no necessity to safeguard the proper ongoing of the proceedings or to protect the important interest of the state. So, the right of access to materials of the criminal case in preparatory proceedings might be limited (derogated) if one of two above-mentioned general prerequisites is fulfilled. In practice first of the mentioned issues includes especially situations of serious, real fear of criminal collusion and obstruction of justice. The second issue includes especially situations of the protection of classified information (for instance with status 'confidential' or 'strictly confidential') or situations like the risk of

	early discovery of evidences, their loss or destruction, or the intimidation of witnesses or other suspects. (Cf. inter alia: P. Wiliński, Odmowa dostępu do akt sprawy w postępowaniu przygotowawczym, „Prokuratura i Prawo" No. 11, 2006, p. 81). According to the Article 159 CCP in case of denial the access to files of criminal case in the preparatory proceedings, the parties (for instance the suspect) might challenge this with the complaint. The order of public prosecutor concerning the denial of access might be challenged with the complaint lodged to the court.
Portugal	The grounds mentioned above (a) and (b) may derogate the right to access to the materials of the case.
Romania	
Slovakia	if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation
Slovenia	The derogation is granted if grounds under (iii), (a) and (b) above are met.
Spain	Only under special circumstances: danger for the investigation, or for persons, in serious crimes.
Sweden	As explained under Question 4 (a)-(b), during an ongoing investigation access to certain materials may be refused in situations where access could prejudice the investigation. A decision regarding access to material is taken by the leader of the investigation. If the case goes to court, the suspected or accused person is in principle entitled to see all information in the case. The right is unrestricted concerning all the information upon which a judgment and decision is based.
The Netherlands	"In the interest of the investigation" the file, or part of it, can be withheld. Further, the prosecutor can decide certain parts of the files will not be provided to the suspect in the interest of the protection of privacy, the investigation and prosecution or serious grounds of general interest. This withholding should be notified to the suspect (article 30.4 and 32.4 NCCP). The prosecutor's decision can be opposed by filing a complaint with the examining judge.
UK	**<u>England and Wales</u>** Whereas the Directive envisages strictly defined circumstances in which access to materials may be refused, Code of Practice C provides that the right to information about the accusation may be derogated from by the investigating officer who may withhold details of the accusation if disclosure might prejudice the criminal investigation. [C§11.1A; H§11.1] Nothing in the Code of Practice C requires the recording or disclosure of the identity of officers or other police staff if the officer or police staff reasonably believe recording or disclosing their name might put them in danger. In these cases, they shall use their warrant or identification numbers and the name of their police station. The purpose of this derogation is to protect those involved in serious organised crime investigations or arrests of particularly violent suspects when there is reliable information that those arrested or their associates may threaten or cause harm to those involved. In case of doubt, an officer of inspector rank or above should be consulted. [C§2.6A; H§2.8; Note 2A]
	<u>Scotland</u> Where the prosecutor is in possession of information which requires to be disclosed in terms of the Act but if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest, withholding the item of information would not be inconsistent with the accused's receiving a fair trial, and the public interest would be protected only if an order for non-disclosure were made, then the prosecutor may apply to the Court for an order for non-disclosure.
	<u>Northern Ireland</u> (a) Public Interest Immunity Applications Material not relevant – test is undermine prosecution or assist defence case

(b) the effect of the derogation (i.e. prejudice the right to a fair trial)?	
Austria	There is no explicit provision to safeguard the right to a fair trial; however, as soon as the investigation is closed, the suspect must have access to the file (unless another person may be harmed). Therefore, the protection of third persons may be in conflict with the right to a fair trial.
Belgium	Could indeed affect the fair trial and right of defence, if the magistrate in charge of the investigation would maintain/repeat his refusal to grant access to the investigation file until the very end of his investigation, because in such case, the suspect could face, due to the time passed in the meanwhile, an impossibility to request effectively (i.e. with a real chance of successful results) some additional investigation acts. The Belgian law provides mandatory at least on the very end of the investigation, the possibility to request additional investigation acts, but this right could however remain vain if in the meanwhile, the time has passed so long that the material/information to search for the defence would have vanished.
Bulgaria	Please see the answer to Question 6 (a) above.
Croatia	The suspect or accussed person may lodge an appeal against the refusal decision of prosecutor. Investigating judge has to decide about appeal in 48 hours. The effect of the derogation is that there is no access to the materials.
Cyprus	There is no case law in Cyprus on the effect of a derogation but it can be legitimately assumed that our Courts will follow the relevant case law of ECHR (see inter alia Rowe and Davis v. UK 30 EHRR 1). According to the case law of the Supreme Court of Cyprus there cannot be a valid conviction if there was a breach of the right to a fair trial under Article 30(2) of the Constitution. Therefore it can be validly said that if the derogation was unjustified the right to a fair trial will be prejudiced.
Czech Republic	See answer to the question 4(a).
Estonia	The effect of the derogation is that there is no access to the materials until the prosecution allows access to be granted. It is possible (and it has happened in practice) that suspects are remanded in custody, relying on materials which the suspect nor counsel have had any access to.
Finland	See answer above. This is a major problem, since the Administrative Court does not feel it has the tools to ensure fair trial but transfers this safeguarding to the general courts. However, the problem is that a general (at the first instance District) court may have the tools to ensure fair trial only at the main proceedings, not at the coercive measures stage, when it possesses all other material in the case. This can happen years after the deprivation of liberty already has ended.
France	As no real access to the “real file” is granted, no dergation is scheduled.
Germany	
Greece	This derogation is not common in practice and no statistic data exist.
Hungary	No prejudice the right to a fair trial.
Ireland	If material is being withheld which would place innocence at risk a Court should indicate to the prosecution that while they can withhold the material they must discontinue the prosecution. This is rarely done in practice.
Italy	It depends from case to case
Latvia	None, because the court gets acquainted with the material.
Lithuania	See the answer (a).
Luxembourg	yes
Malta	Not clear
Poland	It seems that current regulations of the Polish Code of Criminal Proceedings regarding the issue of derogation from the right of access to the materials of the case harmonizes well with the right to a fair criminal proceedings and with the right to defence. The Polish legal standard corresponds with the standard proposed by the EU directive 2012/13 (implementation of this standard made by the Polish law-maker seems to be correct). Unfortunately, there are no information about the aberrations of practical dimension of this legal standard. Theoretically such aberrations are possible, especially at the stage of preparatory proceedings (for instance too wide interpretation of conditions of derogation from

	the right of access to the materials of the case, i.e. the condition of necessity to safeguard the proper ongoing of the proceedings or the condition of necessity to protect the important interest of the state).
Portugal	Sometimes prejudiced the defence rights.
Romania	
Slovakia	In some case it might threaten the ways of defence of the accused person and the right of the authorities to refuse the access to the file could be intentionally abused.
Slovenia	
Spain	It depends on the case. If the secrecy takes too long and during it the investigator judge produces personal evidence, it is difficult afterwards, in the investigation stage or in trial stage, to challenge the outcome of this evidence already provided (i.e. expert statement, witness statement…who made their statement without a cross-examination). If the evidence produced during the period of secrecy is a documental one more than a personal one, the rights of the defense may be not affected. The largest period of secrecy is the major possibility of affecting the right.
Sweden	During an ongoing investigation situations might occur when a refused access to material might prejudice the right to a fair trial. One example can be pointed out on cases with an extensive amount of investigation material when there is a time limit for the trial to start, starting from the date the indictment is submitted to court (e.g. when the accused person is detained or when the accused is a minor person). If the lawyer receives the material only when the indictment is presented to court, there is a limited time to go through the material and prepare the defence, which obviously might prejudice the right to fair trial. A refusal of access to material might also affect the possibilities of challenging coercive measures carried out in the course of the investigation.
The Netherlands	See (a) above.
UK	**England and Wales** See the answer to (a) above.
	Scotland As noted above, withholding the information must be consistent with the accused's right to a fair trial.
	Northern Ireland Depends on nature of material not disclosed. Disclosure judge will look at material and direct that it be disclosed or not. If he directs disclosure and prosecution are not willing to do so then case will be stayed

(c) the means by which the derogation is exercised (i.e. by a judicial authority or subject to judicial review)?	
Austria	The derogation is subject to judicial review (§ 106 StPO).
Belgium	Yes, the investigating judge, or the Prosecutor (but the decision of the latter to refuse the access to his investigation file is not subject to a right of appeal (in the difference of the decision of the investigation judge).
Bulgaria	Please see the answer to Question 6 (a) above.
Croatia	The derogation is subject to judicial review. See previous answer.
Cyprus	According to article 7(5) of the Criminal Procedure Law (Capital 155), in case that the prosecution does not provide the defendant access to part of the statements and documents obtained during the investigation of case, he/she may, at the first hearing of the case, request the Court to examine the reasons for refusal and to issue any order that it is considered necessary.
Czech Republic	See answer to the question 4(a).
Estonia	Derogation is exercised by a decision by the prosecutor. A complaint against the decision can be submitted to the court (i.e. judicial review is available).
Finland	See answers above. Decision is made in the first hand by the head of investigation, subject to appeal to Helsinki Administrative Court.
France	As no real access to the “real file” is granted, no dergation is scheduled.
Germany	
Greece	It is exercised by an investigator or an interrogator-judge.
Hungary	
Ireland	Generally the grant of immunity from production is a judicial function.
Italy	None, except the ordinary time limit to apply for invalidity and nullity of the trial for the infringement of the free and full exercise of the right to defence. Sometimes even together with the appeal against conviction.
Latvia	By person directing the proceedings.
Lithuania	According to Lithuanian law, the derogation is lead by a prosecutor. The prosecutor’s decision is subject to a judicial review whilst in practise pre-trial investigation judges mostly do not turn down the decision of the prosecutor in regard of the derogation.
Luxembourg	Refusal opposed by written decision by the investigating judge and subject to appeal
Malta	Judicial authority
Poland	In Poland, the means by which the derogation from the right of access to the materials of the criminal case is exercised are: - in the preparatory proceedings – a proper decision (the order) is made by the public prosecutor (such order might be challenged with the complaint lodged to the court); - in the proceedings before the court - a proper decision is made by the judicial authority (such decisions are: the order of the president of the court or the decision of the court). These decisions cannot be challenged by the complaint. The current legal standard of the Polish Code of Criminal Proceedings corresponds with the legal standard determined in the EU directive 2012/13. In practice, the mentioned standard is respected.
Portugal	The derogation is exercised by a judicial authority.
Romania	
Slovakia	In pre-trial period the judge may refuse the accused or his lawyer to access the whole content of the file in the proceeding on detention, apart from the information related to the facts and evidence relevant for the decision on the detention. The investigator officer and prosecutor may refuse the access to the file from the abovementioned reason (a). In trial stage is no derogation permissible.
Slovenia	The derogation is exercised by a judicial authority.
Spain	Judicial authority. It is possible to challenge the decision through the current remedies against judicial decisions.

Sweden	Documents held by the investigative authority During an ongoing investigation, it is the leader of the investigation, normally a prosecutor, that determines whether and to what extent access to material shall be granted. There is no specific appeal procedure to challenge a refusal. An application for review by a higher prosecutor can be made. Documents held by the court A court´s decision to refuse access to specific materials of the case can be challenged by an appeal to a higher court.
The Netherlands	See (a) above.
UK	**England and Wales** See the answer to (a) above.
	Scotland As noted above, the prosecutor must apply to the court for an order for non-disclosure.
	Northern Ireland Means by which the derogation is exercised- judicial decision. Applications made by the prosecution, normally certified by a government Minster that there are public interest immunity issues and on foot of that, application is served on the accused and they are entitled to make submissions to the Court about the PII application. The ultimate decision is made by the Judge as to whether the material is to be released or retained.

Question 7. ***What is the situation in your Member State – covering both national law and national practice - with respect to record keeping regarding:*** *(a) the right to information about rights*	
Austria	The information given must be recorded in writing.
Belgium	Recorded in the statement of interrogation
Bulgaria	Taking into account the discrepancies having been depicted so far, between national law and national practice, on the one hand, and the requirements of the Directive, on the other, it is to be specified that, where provided for by national law or in practice, the right to information about rights is noted by use of the recording procedure specified in Bulgarian law.
Croatia	See answer to the question 1a.
Cyprus	In case the suspect or accused is not arrested then see my answer in Question 1(d). In case information is provided to an arrested person, in accordance with the provisions of the Rights of Persons who are Arrested and Detained Law (Law 163(I)/2005), that is recorded in the relevant investigation file along with the date and time at which the information was provided. In case an arrested person requests to exercise any right provided in the above mentioned Law, this is also recorded in the relevant investigation file together with the date and time that the right was exercised. It is provided that if any of the rights provided by Law were not exercised this is also recorded in the relevant investigation file along with the reasons why the right was not exercised. In case that the arrested person does not wish to exercise the rights provided by Law, this is recorded in the relevant investigation file from the person responsible for the questioning and it is signed by the arrested person. It is also provided that in case that the arrested person refuses to sign, the person responsible for the questioning records the fact of the refusal. Lastly, if an arrested person does not ask to exercise the rights provided by Law, he/she is not deprived of his/her right to exercise them at any other time, during his/her detention.
Czech Republic	See answer to the question 1(a).
Estonia	Information about rights is submitted to the suspect on paper and the suspect is asked to read the text and to confirm by his/her signature that they have read and understood the rights. This forms a part of the record of arrest of the person as well as the record of his/her interview.
Finland	See answer in Question 1. In addition to giving a two-page letter to the suspect, the rights are usually always included in the beginning of the first minutes of the interrogation; sometimes in the beginning of all the minutes of interrogations.
France	see above.
Germany	
Greece	It is recorded in a concise manner that the defendant has been informed and then signed.
Hungary	In case of questionings or hearings, the information about rights is always recorded.
Ireland	When a person is taken into custody they will typically have included in the custody record the time at which they were given their notice of rights. The notice of rights in its current form does not comply with the directive and is under revision. It is expected that a revised form will be required. When a person is produced before a Court every Court has its proceedings recorded on a digital audio system. This will include the judge advising the person of their entitlement to legal representation and enquiring as to interpretation and translation.
Italy	Both(information and letter of rights) are kept, together with the evidence of the delivery to the accused person, are kept in the file case

Latvia	Receival of the provided information is confirmed with signature in protocol.
Lithuania	The second example of the notification with the signature of the suspect is being attached to the case material.
Luxembourg	No recording procedure
Malta	Legislative sanction
Poland	Providing to a detainee the information about rights of a detainee (as well as a detainee on the basis of a European Arrest Warrant) shall be indicate in the minutes of detention. The minutes of detention include a section titled 'declaration of detainee' and in this section a detainee – by his or her signature – declares that he or she has been informed about the reasons of detention and his or her rights. Also, a detainee declares in the same manner that he or she has received a letter of rights of a detainee in criminal proceedings or letter of rights of a detainee on the basis of a European Arrest Warrant). Minutes of the detention are attached to the files of criminal cases. In preparatory proceedings the providing to a suspect the information about his or her rights (and duties) is noted in the minutes of examination of a person as a suspect in criminal proceedings. The minutes of examination shall include the notation that a concrete person has been informed, before the first examination, about his or her rights include in the letter of rights and duties. A suspect declares in minutes – by his or her signature – that he or she has received the letter of rights and duties in writing. An accused - during the trial before the court and as well as before the first examination in the court – is instructed by the presiding judge about his or her rights according to the Article 386 § 1 CCP (i.e. about the right to depose, right of refusal to depose, the right of refusal to answer questions, the right to give evidences and about some other issues). Such instruction (information about rights) is contained in the minutes of the trial. Due to the Article 143 § 1 CCP point 11 the course of trial needs the preparation of minutes (by the way – the minutes are also demanded for documentation of the course of court sitting, if entitled persons are present during this sitting or their presence is mandatory one – see the Article 143 § 1 point 10 CCP). If during the proceedings before the court an accused (or other entitled person) applies for the possibility of access to the materials of the criminal cases, a proper decision in this field is made by the judicial authority (order of the president of the court or the decision of the court). These decisions are contained in the files of the criminal case in proceedings before the court. By the way, in preparatory proceedings the order of the public prosecutor giving the grounds for the possibility of exercise by entitled persons the right to access to materials of the criminal case is attached to the files of the concrete criminal case. It's worthy to remark that in the light of the Article 143 § 1 point 8 CCP a procedural activity of a competent authority in criminal proceedings which requires the minutes is also the activity of final becoming familiar of a suspect, an injured person, defence lawyers and legal representatives with the materials of the preparatory proceedings. Such minutes are attached to the files of a criminal case. In turn, the Article 143 § 2 CCP states that minutes are also necessary for documenting procedural activities undertaken in criminal proceedings if specific regulations demand it or if in the opinion of an official responsible for the activity the preparation of minutes will be considered as necessary. In other situations the sufficient form of documentation of activities is a preparation of an official note (official memorandum). Such official memorandums are also attached to the files of criminal case. In the area of the analyzed issue, the legal standard and practical standard seem to cover themselves.
Portugal	Is regarded the record keeping.
Romania	
Slovakia	Every act in the course of criminal proceeding must be recorded in the Minutes, either while the act is being performed or directly afterwards
Slovenia	The right to information about rights in noted in the minutes of the hearing of the suspect or accused.
Spain	It is provided in Police Station and in Courts. Not always a paper with th rights is given to the suspect.
Sweden	A record shall be kept of all matters of importance to the investigation. When information on procedural rights is provided this ought to be noted in the record. Notes of the provided information on procedural rights are not systematically included in the record of the preliminary investigation that is delivered to the lawyer. Due to this, and as a lawyer usually has not been appointed at the time when the information should be provided, the lawyer often has limited knowledge of whether the information has been provided in full accordance with Article 3 and 4.

	Information about the accusation provided in the course of interrogations is noted in the record of the preliminary investigation. The information is included in the material delivered to the lawyer. Any such information provided in other situations, e.g. in direct connection with an apprehension, is at least not noted in the material delivered to the lawyer.
The Netherlands	Starting point is that the file should mention that the rights have been notified to the suspect. Article 27c.5 implements article 8.1 of the Directive in this regard. In practice, mostly the file only mentions that the suspect has been notified of his right to remain silent and of the fact that he is entitled to have a consultation with his lawyer prior to his first interrogation.
UK	**England and Wales** A custody record must be opened as soon as practicable after the arrival of a person brought to a police station under arrest, the arrest of a person who voluntarily attended a police station or the arrival of a person at a police station to answer bail. [§2.1] Information recorded in the custody record includes: the offence(s) that the detainee has been arrested for and reasons for the arrest and the grounds for detention and that the detainee has been informed of said grounds [§3.4(a)] the responses of the detainee to offers of legal advice and whether they wish to have someone informed of their detention [§3.5(a)-(b)]
	Scotland To the nature of the charge, and any reply given in response to the caution, are recorded in detention/arrest forms.
	Northern Ireland Where a person has been detained in custody a record is made on their custody record that they have been served with their letter of rights (copy attached) and they are asked to sign to confirm that they have received this material. An electronic record of their signature will then be produced on any copy of the custody record provided.

(b) the Letter of Rights	
Austria	The Letter of rights must be given to the suspect in writing. Moreover, the fact that the letter was given to the suspect and the fact that he has been informed about his right must be recorded in writing.
Belgium	Recorded in the statement of interrogation
Bulgaria	Taking into account the discrepancies having been depicted so far, between national law and national practice, on the one hand, and the requirements of the Directive, on the other, it is to be specified that, where provided for by national law or in practice, the right to information about the Letter of Rights is noted by use of the recording procedure specified in Bulgarian law.
Croatia	See answer to the questions 1(a), 2(b).
Cyprus	As regards the document with the Rights of Detained Persons, the arrested person is asked to sign a statement that he/she was informed about his/her rights and that he/she received a copy of: Letter of Rights, Declaration by the Detained Person, Right of detained person to medical examination and Detention centre rules, in a language that he/she understands. This statement is included as Annex A4 in the document with the Rights of Detained Persons.
Czech Republic	See answer to the questions 1(a), 2(b).
Estonia	There is no provision in CCP on making a note concerning the provision of letter of rights to the suspect.
Finland	According to the Criminal Investigation Act, the letter needs to be given in writing. In the Government Decree relating to the Act, there is a specific provision on the fact that when a person is arrested, inter alia when and who has given the letter of rights shall be registered.
France	see above.
Germany	
Greece	It is recorded in a concise manner.
Hungary	In Hungary, there is no Letter of Rights**.**
Ireland	See reply at (a) above.
Italy	
Latvia	Receival of the Letter of Rights is confirmed with a signature on the Letter of Rights.
Lithuania	See the answer (a).
Luxembourg	Not even existing
Malta	As above
Poland	Letters of rights are provided to detainees and detainees on the basis of a European Arrest Warrant and this fact is noted in the minutes of detention. Either a detainee or a detainee on the basis of a European Arrest Warrant declare that they received an adequate letter of rights by their signatures in the separate section of the minutes of detention. In the minutes they can also make a statement, among others, in the relation with the information about the reasons of detention as well as about the rights they might exercise. Both model letter of rights for a detainee and model letter of rights for a detainee on the basis of a European Arrest Warrant (attached to the proper ordinances of the Minister of Justice) include the information about the right of the mentioned detainees to be heard and to make or to refuse of making a statement in their situations. In Poland, the standard of practice corresponds to the mentioned legal standard. A suspect receives his or her letter of rights (and duties) in writing form and this fact is also noted in the minutes of the examination of a suspect. A suspect declares it by his or her signature in the minutes of examination, under the phrase: 'I have received an instruction (a letter of rights and duties) in writing'. A letter of rights and duties – being in conformity with text of such model letter attached to the proper ordinance of the Minister of Justice – is handed over a suspect before the first examination by a competent authority.
Portugal	No information.
Romania	

Slovakia	Every act in the course of criminal proceeding must be recorded in the Minutes, either while the act is being performed or directly afterwards
Slovenia	There is no provision in the law in which manner the right to the letter of rights is recorded.
Spain	See previous answer.
Sweden	See the answer under (a) above.
The Netherlands	See (a) above.
UK	**England and Wales** After a detainee has been provided with the Letter of Rights or Notice of Rights Entitlement (NoRE), he must be given an opportunity to read it and shall be asked to sign the custody record to acknowledge receipt of the NoRE. Any refusal to sign must be recorded on the custody record. [§3.2A]
	Scotland A record is kept of the fact that a Letter of Rights has been issued.
	Northern Ireland As above

Question 8. ***What is the situation in your Member State – covering both national law and national practice - with respect to the right to challenge any possible failure or refusal to provide information?***	
Austria	As long as the lawyer (or the suspect) knows that he is not fully informed, he can challenge the failure or refusal (§ 106 StPO). However, it may happen that the suspect is not informed at all (e.g. about the fact that there is an ongoing investigation against him), which practically makes it – in some cases – impossible to challenge the failure.
Belgium	As already mentioned, the refusal of the investigating judge to grant (full) access to his investigation file may be challenged before the court of appeal (Chambre des mises en accusation). This is however NOT the case, for the refusal of the Prosecutor to grant access to his investigation file (the Prosecutor being considered as belonging partly to the executive power (Government), the Supreme court (cour de cassation) considers that no jurisdiction may review such decision of the Prosecutor.
Bulgaria	Taking into account the discrepancies having been depicted so far, between national law and national practice, on the one hand, and the requirements of the Directive, on the other, it is to be specified that in Bulgaria, where the rights under the Directive are provided for by national law or in practice, suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide information in the meaning of the Directive. This holds true also in the cases observed above, where explicit legal provisions are missing but the exercise of the relevant rights is guaranteed in practice. Failures or refusals to provide information may be appealed in the context of appealing the court judgment as a whole and may be defined by the court of appeal as substantial procedural breaches. This may result in quashing the court judgment of the first instance court.
Croatia	According to the Croatian CPA, such failure could be challenged with legal remedies.
Cyprus	When the suspect or accused is not deprived of his liberty then a breach of the Judges Rules mentioned above may be received in evidence, if the Court is satisfied that the statement is voluntary. When the suspect or accused is deprived of his liberty and the right to information of the arrested person is breached then his/her statement may be rendered inadmissible in evidence. Furthermore If a member of the police force breaches the right of a detainee of access to information in criminal proceedings raised against him/her, the member of the Police responsible will be (a) criminally liable punishable with imprisonment up to six months or a fine not exceeding 1700 Euros, (b) disciplinarily liable under the police law. Be it noted that a member of the police force interfering with the unimpeded access of the accused to information concerning criminal proceedings against him/her is likewise disciplinarily liable. Furthermore a right is conferred upon the suspect and the accused whose rights are violated to damages against the Republic and the person or persons responsible for breach or denial of those rights independently of whether he/she has suffered any material damage. (See Articles 32, 34, 36 of the Law 163(I)/2005.) Also according to article 7(5) of the Criminal Procedure Law (Capital 155), in case that the prosecution does not provide the defendant access to part of the statements and documents obtained during the investigation of case, he/she may, at the first hearing of the case, ask the Court to examine the reasons for refusal and to issue any order that it is considered necessary.
Czech Republic	See answer to the question 1(a). Such failure could be challenge within standard legal remedies.
Estonia	There is no provision in CCP specifically devoted to challenging failures or refusals to provide information. General provisions on complaints (§ 228 of CCP) apply, but this procedure can not be characterized as effective in these circumstances.
Finland	This question is quite general, but basically the rules apply as described above. If the investigative authority refuses to provide information about certain documents, this decision can be appealed to the Administrative Court (which is, in our opinion, not an effective remedy). At the hearing stage in District

	Court (or the appellate stage), the court can require the prosecutor to complete the investigation, but at least on a principal level, the prosecutor cannot order the police to do so (even though in practice the police does what the prosecutor asks). A request for edition is also possible, but may be a theoretical remedy. Another thing that is problematic is that even though the investigative authority by law should keep record of material, which is deemed unnecessary and left out of the actual police report, and include this record to the police report, in practice this is not always done. Hopefully the implementation of the Directive will bring positive changes in this regard, but it remains to be seen.
France	There are no possibility of challenging it, the access to the file during custody as led to a massive and constitutional litigation before the Constitutional council that ruled that the acces to file is not constitutionally granted. Claims are pending before the ECHR.
Germany	
Greece	The right of the defendant to challenge the refusal to provide information is regulated. In practice, the defendant through his counsel may file objections.
Hungary	There is a right to challenge.
Ireland	It is open in all prosecutions but particularly in more serious prosecutions in the Circuit, Central Criminal and Special Criminal Courts that there are lengthy hearings devoted to the issue of disclosure. The law in relation to disclosure in Ireland is unsatisfactory. It is not anything as well-developed as the law of discovery in civil proceedings. In particular no sworn Affidavit is required and no individual person is identified as being accountable. The Director of Public Prosecutions is accountable in a general way but that is not considered by defence practitioners as being as effective as an individual policeman in a particular case having to list all relevant documents and account for the disclosure exercise. Equally the issue of claiming privilege is unsatisfactory. This is because we do not have a procedure where special independent lawyers are engaged to have sight of documents which the prosecution contend cannot, on grounds of national security or similar, be provided either to the accused or the accused's lawyers. Instead the documents are provided to the judge or judges and they are inspected to make a decision as to whether they are essential for production to ensure the fairness of the trial. The judge of judges does not have the benefit of the instructions of the accused and is not in a proper position to assess what the defence case is likely to be, given that we do not have a written procedure providing a defence case statement in advance of trial.
Italy	In the stage immediately after or making application for the voidness of the subsequent act.
Latvia	It may be challenged.
Lithuania	Any refusal to provide information could be appealed.
Luxembourg	Decisions may be challenged by lawyers before the chamber of council with the possibility of appeal before the chamber of council of the court of appeal
Malta	Challenge afforded
Poland	In the Polish Code of Criminal Proceedings of 1997 there are no provisions separately concerning the possibility to challenge a failure or a refusal of the competent authorities to provide information in accordance with the European Union directive 2012/13. A detainee or a detainee on the basis of a European Arrest Warrant have the right (and they are informed about it) of challenging by the complaint to the court his or her detention. In such complaint he or she can demand to examine the validity (legitimacy), the legality or the correctness of his or her detention (see the Article 246 § 1 CCP). By the way – in the minutes of detention – it's possible to notify the objections to the contents of the mentioned minutes (see the Article 150 § 2 CCP). A suspect or an accused having the right of information about their rights don't have at the same time the exclusive possibility to challenge a failure or a refusal of the competent authorities to provide information in accordance with the European Union directive. A suspect or an accused could notify the objections to the contents of minutes of examination – adequately – in the preparatory proceedings or in the proceedings before the court (see the mentioned Article 150 § 2 CCP). A failure or a refusal by a competent authority to provide information in accordance with the European Union directive 2012/13 might be treated as violation or misapplication of procedural provisions which could have an impact on the decision (verdict) of the competent authority and in this light – it might become prerequisite to lodge an appeal (see the Article 438 point 2 CCP).

	In Poland, in practice a failure or a refusal by a competent authority to provide information are raised in appeals.
Portugal	The law provides the right to challenge any possible failure or refusal to provide information.
Romania	
Slovakia	In case of violation of defence rights, the accused may file an application to have the police actions examined; he/she may file an appeal or an appellate review. Moreover, constitutional complaint could be considered too.
Slovenia	Accused persons (and their lawyers) have the right to challenge a failure or refusal to provide information in an appeal against judgement.
Spain	In judicial stage it is possible to challenge the lack of information through the current remedies against judicial decisions. The problems arise in police station. If they deny the right to get access to the documents in the police file, the person arrested or his/her lawyer only can issue an habeas corpus, or, otherwise, ask the police to record the petition denied in the moment the act that took place..
Sweden	There is no specific appeal procedure to challenge a possible failure or refusal to provide the information on rights. An application for review by a higher prosecutor can be made. The practical effect of such application can be questioned.
The Netherlands	Regarding any non-compliance with the law as far as the rights referred to in the Letter of Rights are concerned, imposing of sanctions is not possible. If a non-compliance is established the court is authorized to impose a sanction, but whether a sanction should actually be imposed, and if so the nature of such sanction, depends on the merits of each case and especially on whether the suspect's interests are harmed. The Dutch Supreme Court has explicitly judged that in case a suspect did not get the opportuni-ty to consult a lawyer prior to his first interrogation the results of that interrogation (the statement) can-not be used as evidence and should be excluded. With regard to all other breaches of the law the sanc-tion is unclear and should be determined on a case-by-case basis. An important starting point in deter-mining whether a breach in relation to these rights should result in a sanction is that such breaches ei-ther do not have further detrimental consequences for the suspect (and therefore need not to be sanc-tioned) or can be repaired as a result of which a sanction is not necessary either (for instance: in case a suspect receives his file too late, the court hearing will be postponed to give the suspect sufficient time to prepare).
UK	**<u>England and Wales</u>** A complaint may be made by or on behalf of a suspect that information about his rights and/or access to records and documents has not been provided as required. [§3.26] In such cases, the matter shall be reported to an inspector not connected with the investigation to deal with as a complaint as soon as practicable. [C§9.2; H§9.3] Where the complaint is made in the course of an interview by or on behalf of the interviewee, or it comes to the interviewer's notice, the interviewer should record the matter in the interview record and inform the custody officer. [C§12.9; H§12.10]
	<u>Scotland</u> Where an accused person considers that the Crown have failed to disclose material information, the Act makes provision for an accused person to apply to the court for a ruling that the information is material and the Crown's duty to disclose is engaged.
	<u>Northern Ireland</u> Disclosure judge appointed not trial judge so he can see all materials in diplock i.e. non-jury trials Criminal Procedure and Investigations Act 1996 Section 8 disclosure application dealt with by trial judge

Question 9. ***Has the directive brought important changes on the right to information in criminal proceedings in the legislation and practice of your Member State? what are the main aspects that could be improved, both at EU and national level?***	
Austria	The presentation of a “letter of rights” to the suspect was an improvement due to the directive.
Belgium	No the directive did not brought important changes. The main aspect that could be improved in Belgium : a) the information provided to the suspect (deprived or not of liberty) should need to be more precise and complete, in order to give to the latter the possibility to exercise more effectively his right of defense during the questioning (in place of discovering the exact scope and subjects of the facts under investigation through the questions raised in course itself of the questioning. b) the introduction of an appeal against the decision of the Prosecutor to refuse access to his file.
Bulgaria	I am afraid it has not. As I tried to explain in the previous answers, no measures to transpose the Directive into national law were taken, which resulted in a number of discrepancies between national law and practice, on the one hand, and the requirements of the Directive, on the other. Changes could have been brought, if all the requirements had been transposed. For the time being I do not feel ready to answer what aspects could be improved at EU level in a situation where Bulgarian law does not correspond to all the requirements of the Directive as it is now.
Croatia	These kind of rights and procedures defined by this concrete Directive, were already inherent part of the Croatian criminal procedure.
Cyprus	The Directive that was transposed in Cyprus by Law (see law L. 163(I)/2005), brought important changes in our legislation and practice. It included many additional rights, and existing rights were better clarified and enhanced, such as the obligation to provide information as to the right of free legal aid, the right to remain silent, and the right to have access to the materials of the case. As mentioned above in my answer in Question 1(a) there is no obligation on the part of the police to warn the suspect before arrest and before the taking of a statement and/or questioning about his/her right to legal advice. This in my opinion is an omission of Cyprus Law which should be remedied. The scope of the Rights of Persons who are Arrested and Detained Law (L. 163(I)/2005) should be extended to include the right to information of criminal proceedings to the suspect before he/she is arrested. Also i believe that Article 2 of the Directive (Scope) should apply not only to suspects or accused persons but also apply to every person that is questioned by the Police (or any other competent authority) even though at the time they are not suspect or accused. This is because during police questioning the person may give evidence which is self-incriminating. Also the Directive should apply when a person is not yet suspect or accused but there is court order for search of his/her premises. Also the Directive should cover not only free access to information about criminal proceedings but also provide the suspect or accused with the right to obtain free copies of the material that is going to be used against him/her in Court. See also my answer to Question 5 (c).
Czech Republic	The implementation of the Directive is effective since 1. 8. 2014, it has not brought important changes. Specifically it has included information about several new rights as information about urgent medical help, maximum time-limit of deprivation of liberty etc. and about receiving and keeping of letter of rights.
Estonia	The Directive did bring important changes -- the introduction of the letter of rights, and the possibility to get access to the case file before the close of pre-trial investigation (previously, there was no possibility for such access at all). However, the way our government has implemented the Directive is clearly not in accordance with the Directive (the prosecutor's wide discretion to refuse access, even in situations where the subject matter of such refusal is detention-related material). As a minimum, the state must bring its regulations to accordance with the Directive.

Finland	At this stage it is still a bit early to say. We hope that especially concerning access to material, the situation would be improved in Finland, since at least detention hearings have been for a long time "mock-trials", because the defence has not been able to acquaint themselves with the proper material. Some improvement has already been noted, but we need to follow up on this. At national level, the access to material especially at the investigative stage is still not in a very good shape. The investigative authority usually refuses access based on the fact that access could jeopardize the investigation. Also the appeal to the Administrative Court is not an effective remedy and there were some criticism even from the Constitutional Committee regarding this way of arranging the judicial review, but it was considered to fulfil the minimum requirements.
France	The directive in itself was supposed to bring a very important change but the French implementation by the law of the 27 th of May 2014 cancelled all the predictable effects. The French law is not at the present time conforming with the aim and the requirements of the directive.
Germany	
Greece	Effective changes: a) information on the accusation and the suspect, and b) the Letter of Rights.
Hungary	In case of persons in detention, it is a novelty that the materials underlying the detention shall be provided to the suspect and the legal counsel before the decision of the court on detention.
Ireland	The directive has not yet changed the previously applying practice in relation to the right of information. This is likely to be of particular importance in the future as lawyers at the point of detention will be looking for access to the entire case file in order to give their clients fuller advice as to how they should deal with the situation in which they find themselves. It is likely that there will be quite an amount of litigation in Ireland as to what the true meaning of information is. The broad view which defence practitioners favour is that this includes all the facts relevant to the prosecution. The narrow view is that a person is simply entitled to be informed as they are presently, of the nature of the accusation but not informed of the materials stated to exist to support the accusation.
Italy	
Latvia	Most important change is regarding the right to become familiar with the materials of the case which constitute the basis for the proposal to apply a security measure related to deprivation of liberty insofar as such access does not infringe the fundamental rights of other persons, the interests of the society and does not interfere with reaching of the objective of the criminal proceedings. Unfortunately this right does not work in national practice and familiarization with the materials of the case which constitute the basis for the proposal to apply a security measure related to deprivation of liberty is almost always is refused.
Lithuania	The main change in the national law on the right to information which has been brought to Lithuania by the directive is the obligatory provision that obliges the prosecutor to ensure for the suspect or/and the lawyer access to the case material that was presented to the judge while deciding upon the detention of the suspect. To my opinion, very concrete grounds under which the prosecutor can refuse the access to any case material should be indicated in the law.
Luxembourg	No the directive in itself was ignored by the practice till the recent decision in the afore mentioned AT case. Lets see how the practise will improve
Malta	Yes
Poland	Yes, it has. Generally the change of legal standards has extorted the change of practice in the area of the right to information in criminal proceedings (the new practice has just started but it seems to correspond well with the procedural law standards). However, in some procedural aspects the implementation of the EU directive 2012/13 made by the Polish law-maker, exceeded the deadline indicated in the directive (some regulations of the Polish Code of Criminal Proceedings implementing the provisions of the directive entered into force on the 1st of July, 2015). In some other procedural aspects – what has been already mentioned above – the implementation in Poland needs to be slightly corrected. I don't postulate to improve the aspects of the detainee's, suspect's or accused person's right to information in its normative dimension at the European Union level. Current European Union model in this matter (corresponding with the regional standard of the European Convention on Human Rights) seems to have a good quality.

Portugal	No, in which concerns the Portuguese legislation.
Romania	
Slovakia	The Directive has not been transposed yet.
Slovenia	The directive has not brought important changes on the right to information in criminal proceedings in the legislation and practice in Slovenia.
Spain	In Spain There are not important problems with the information in judicial stages. In that sense, the directive does not add too much. Problems are found in police's station, as explained above.
Sweden	The Directive has primarily been implemented into Swedish law by application of existing legislation and by reference to basic principles of law. The legislative amendments basically concern the right of access to information on certain procedural rights and the right of access to the materials of the case when the suspected is arrested or detained. The amendments have entered into legal force 1 June 2014. Although a higher level of awareness of the rights to information on procedural rights can be noted within the investigative authorities, it is too early to point out specific areas where systematic changes has been made. The Swedish Prosecution Authority has initialized a following up on how the new rules are applied within the authority. On a national level mainly the following aspect could be improved: - In regard to the rights set out in Article 7.1 there is a need for coherent practice on how the material shall be provided to the suspected person/lawyer to allow the exercise of the right to challenge the lawfulness of the deprivation of liberty. - With reference to article 7.1 and recital 30, there is a need for coherent practice ensuring that the material is provided to the defence promptly, and at least in due time before a detention hearing at court. - In regard to Article 7.1-3 there is a need for a more frequent use of providing the suspect and the lawyer material during an ongoing investigation, especially in cases with extensive investigation material.
The Netherlands	Observation 1: the defense's rights should be better known within the police organization Observation 2: a non-motivated withholding of the file should be faster challenged before an independent judge Observation 3: the information provided to the suspect when he is arrested or detained is too concise. It seems that this is not in compliance with recital 28 of the Directive's preamble where it is assumed that the suspect should be informed in as much detail as possible about time, place and facts of the offence he allegedly committed.
UK	**<u>England and Wales</u>** Many of the rights set out in the Directive already formed part of national practice in the Codes of Practice prior to amendment. However, implementation of the Directive has had the effect of expanding and clarifying the scope of these rights in two important ways. First, a Notice of Rights and Entitlement was already provided to detainees but implementation of the Directive has resulted in a more detailed NoRE providing written notice to detainees of their rights. In particular, it incorporates the right to information about the offence and reasons for arrest and detention. This right also has to be explained orally. Second, implementation of the Directive has increased the scope of pre-interview disclosure. Sufficient information has to be disclosed, whether or not the suspect is legally represented. The difficulty, however, is that the Directive has been implemented by way of amendment to the Codes of Practice issued under the Police and Criminal Evidence Act 1984 rather than by legislation. The Codes of Practice are not statutory instruments and the Notes for Guidance which assist in clarifying some of the amendments brought about by implementation of the Directive have an even lesser status. Failure to comply with any provision of a Code does not of itself render the individual concerned liable to criminal or civil proceedings. [PACE 1984, s.67(10)] Remedies for breaches of the Codes of Practice lie by way of complaint to the Independent Police Complaints Commission and, more importantly, may

	result in the inadmissibility of evidence obtained in breach of the Code in subsequent criminal proceedings.
	Scotland There has been a right to disclosure of information at common law since at least the case of McLeod, Petition in 1998. The nature and extent of that right was considered in a number of subsequent cases (notably Holland and Sinclair in 2005). The provisions of the 2010 replace the common law.
	Northern Ireland

Question 10. ***Do you have comments on an article of the directive not covered by any of the questions above?***	
Austria	No comments.
Belgium	No.
Bulgaria	The questions above did not cover Article 5 ("Letter of Rights in European Arrest Warrant Proceedings)". It is to be noted that the requirements of Article 5 have not been transposed in Bulgarian law and are not applied in practice. The questions above did neither cover Article 9 ("Training"). As regards judges and prosecutors, they participate in various forms of training on EU law organized by the National Institute of Justice. Training on EU law definitely covers all Directives that have become effective for Bulgaria, the Directive on the right to information included. As regards the training of police and judicial staff, I have no information.
Croatia	No.
Cyprus	No.
Czech Republic	No.
Estonia	No
Finland	
France	
Germany	
Greece	No.
Hungary	No.
Ireland	Not to date
Italy	
Latvia	No.
Lithuania	There are no additional comments.
Luxembourg	no
Malta	No Information
Poland	No comments.
Portugal	No comments.
Romania	
Slovakia	
Slovenia	No.
Spain	No.
Sweden	
The Netherlands	Starting point in Dutch criminal law is that the court renders its judgment n the basis of the original file which contains all original reports and relevant documents. The defense has the right to inspect the court's file to verify whether he has a complete file at its disposal as well.
UK	**England and Wales**
	Scotland No comments.
	Northern Ireland

Question 11. ***Do you have any good practices to pass on, that you have not already mentioned? (N.B. This question is particularly important, given that one of the sections of the final report will focus on good practices.)***	
Austria	An important issue is access to the files of the case in way so that the costs are affordable. Paper copies are too expensive in Austria (62 cents per page). Therefore, in some major cases (often white collar crime), the court file is scanned and given on CD ROM (or USB stick) to the parties (which usually very cheap). Moreover, the ministry of justice together with the ministry of the interior seek to devise technical means to grant online access to court files. Such online access is already standard in civil procedures; as soon as online access to criminal files is possible, the defence lawyers can look into the files on a daily basis. However, it is yet unknown when the system will be deployed.
Belgium	No.
Bulgaria	No, I do not have good practices to pass on, other than those I have already mentioned.
Croatia	No.
Cyprus	As mentioned above in a nutshell I believe that the establishment of the Independent Authority for the Investigation of Allegations and Complaints against the Police in 2006 is a good practice because even though we have more or less the legal framework demanded by the European Union in reality there are problems in complying with the law. Furthermore an inclusion of the right to communicate with the said independent authority in the legislation and also an expansion of the current IAIACAP which will include permanent criminal investigators, translators, photographers and other personnel will increase the confidence of the Public that the Police is under constant scrutiny and they comply with all the provisions of the Law. This will improve the administration of Justice and the protection of fundamental human rights.
Czech Republic	No.
Estonia	Providing access to materials by way of submitting an electronic copy of the case file could be useful, provided however that the material has true electronic properties (i.e. it is properly indexed, searchable, etc). Unfortunately, the Estonian authorities do not apply this in practice, and our electronic copies are simply scanned PDF-files which in essence are not much different from paper documents.
Finland	
France	In France, we have decided to register during every custody a note to the file considering the access to the file is not granted and does not put the lawyer in such a position that he or she can effectively defend his or her client.
Germany	
Greece	The field of translation and its infrastructure should be enhanced. Greece due to its geographical complexity is difficult to provide translators in all parts of the country. Also, efforts have been made to comply with the duty of providing copies of the files free of charge, to those who can't afford the fee. The effort mainly focuses on providing documents translated free of charge and in a language understood by the accused.
Hungary	No.
Ireland	This will rest entirely on how broadly "information" is interpreted, potentially by a referral to CJEU
Italy	
Latvia	No.
Lithuania	There are no examples of good practises to pass on.
Luxembourg	A Good Practise would be the one to give immediate and full acces of all material proof of the case to the lawyer before this one has to assist the person under proceedings, so that his assistance would become real and effective, and not hypothetic and illusionary.

	That authorities such as police and investigating authorities ask for an exclusion of this communication of all acts still under execution (demande d'exclusion de tous devoirs en cours d'exécution de cet accès au dossier) is of pure and easy understandable evidence. However, this argumentation of pursuing authorities should not become an argument to refuse the complete access to the file and so hamper the activity of defence.
Malta	No Information
Poland	One of the most significant things seems to be the development of consciousness and knowledge about the right to information (its particular aspects) both of officials of investigation and criminal justice administration and members of society (by professional trainings organized for investigation and criminal justice practitioners and by information campaigns addressed to the society). In concrete criminal proceedings the good practice could be offering for a person who has just obtained information on his or her rights a reasonable time to assimilate it in a tranquil atmosphere and a possibility to ask the competent authority the questions connected to the aspects of the right to information as a procedural safeguard of other rights – the right to defence and the right to the fairness of criminal proceedings (the right to a fair trial).
Portugal	No comments.
Romania	
Slovakia	
Slovenia	
Spain	No good practise to share.
Sweden	See examples of practices mentioned above.
The Netherlands	
UK	**England and Wales** See previous answers in questionnaire.
	Scotland Scotland has both a national police force, Police Scotland, and a national public prosecuting authority, the Crown Office and Procurator Fiscal Service. The Code of Practice issued by the Lord Advocate under the 2011 Act sets out the roles and responsibilities of both the police and the Crown. This ensures (i) "joined up thinking" as between the police and the Crown and (ii) consistency of practice across Scotland, which is commendable.
	Northern Ireland

QUESTIONNAIRE RESPONSES – ACCESS TO A LAWYER

Question 1.

What changes need to be made in your Member State – covering both national law and national practice - with respect to the right of access to a lawyer regarding:

(a) the time of provision (e.g. without undue delay, before questioning etc)?

Austria	None
Belgium	The Directive 2013/48/EU on the right of access to a lawyer has not yet been implemented in Belgian internal law so far (latest delay is 27/11/2016). However the Belgian law already covers many requirements of the said Directive as stated hereunder (see article 47bis of the Belgian criminal procedure Code, and article 2bis and 16, § 2 of the Belgian law of 20 July 1990 relating to temporarily detention). Time: No specific change needed. The requested and pertinent information is indeed given in due time as soon as – and before - a person has to be interrogated as suspect or accused and to any person who, in the course of the questioning by the police or by another law enforcement authority, becomes suspects or accused (see article 47bis, § 5, of the Belgian criminal procedure Code, and article 2bis of the law of 20 July 1990 relating to temporarily detention).
Bulgaria	The right to access to a lawyer is proclaimed as a basic principle by the Bulgarian Constitution and by the Criminal Procedure Code (CPC). It is subject to a detailed regulation by many rules of the Code covering the entire course of criminal proceedings both at their pre-trial and trial stage. In general, academicians, judges and other practitioners share the view that at present all these rules can be construed as practically expressing the idea that the exercise of the right to access to a lawyer is secured *without undue delay and in full compliance with the special requirements of Article 3.2 (a), (b), (c) and (d) of the Directive.* Yet CPC does not explicitly proclaim that accused persons shall have access to a lawyer *without undue delay*. Thus, the importance of this requirement of the Directive is somewhat underestimated at the normative level. In my view, in order to reinforce the significance of the "*without undue delay*" requirement, it is necessary to amend Article 15 (3) of CPC. At present the rule stipulates that the court, the prosecutor and the investigating organs "shall secure to all participants in the trial the opportunity to exercise their procedural rights", the defendant's right to access to a lawyer being one of these rights. The amendment to Article 15 (3) of CPC could be that the said institutions shall secure this opportunity *"without undue delay"*. As to national practice, practical measures are to be taken as far as the police authorities are concerned, in order to prevent failures to secure the access to a lawyer without undue delay, which exist now in some cases of arrests by the police.
Croatia	No changes need to be made. Both suspects and accused persons have a right to have a defence lawyer at any stage of the criminal proceedings without undue delay, which is a basic principle of the Croatian Criminal Procedure Act (furthermore: the CPA). The right of access to a lawyer is prescribed in Articles 5, 7, 64 and 65 of the CPA.
Cyprus	As a general comment it must be stated that the current legislation contains several of the provisions included in the Directive. These laws are the Constitution of the Republic of Cyprus (Articles 11(4) and 12(5) (c)), the Criminal Procedure Law (Article 13, 64 and 85, the Rights of Persons Arrested and Detained into Custody Law of 2005 (Articles 3(2)(a), 7-14, 17 and 29) and the European Arrest Warrant and the surrender procedures between Member States of the European Union Law of 2004. I communicated with the Ministry of Justice and Public Order and they believe that instead of enacting a new law based solely on the Directive they are considering the amendment of the three aforementioned laws. When the three amending bills will be prepared by the Ministry of Justice and Public Order (by the end of the year) then they will be sent to the Legal Service of the Republic for their legal vetting and immediately after that will be forwarded (by the Ministry of Justice and Public Order)

	to the Council of Ministers for their approval and to the House of Representatives for their enactment into law. It is expected that by June 2016, the process will be completed. However there is no obligation on the part of the police to warn the suspect before arrest and before the taking of a statement and/or questioning about his/her right to legal advice. This in my opinion is an omission of Cyprus Law which should be remedied. The scope of the said Cypriot legislation should be extended to include the right to information of criminal proceedings to the suspect before he/she is arrested. My opinion is that the Cyprus Republic should enact a law based solely on the Directive to avoid any conflicting provisions and have a unified legislation which provides clear provisions about the right of access to a lawyer including as mentioned above the right of access to a lawyer to the suspect before he/she is arrested. When a person is arrested then the Rights of Persons Arrested and Detained into Custody Law of 2005 applies which provides that the arrested person must be informed immediately after arrest about his/her right of access to a lawyer.
Czech Republic	No changes need to be made. Both suspects and accused persons have a right to have a defence lawyer at any stage of the criminal proceedings (see Sections 2(13), 33(1), 76(5)(6), 158(4), 179b(2) of the Code of Criminal Procedure (furthermore only "CCP")).
Estonia	No changes need to be made -- access to lawyer is already guaranteed immediately from the moment the person becomes a suspect, and before any questioning
Finland	For the time being, the system generally works quite well. On issue that has arisen, is access to a lawyer during weekends, holidays, etc. There is no on call duty system and the Members of the Bar have been a bit reluctant to implement such on a voluntary basis, since no separate compensation for such a system exists. In the bigger city regions there is usually a lawyer available quite rapidly. However, when going to more remote locations, especially in the north, a lawyer can be expected to drive a couple of hundreds of kilometres to be at a police station to assist in an interrogation. Even though videoconferences are not the optimal solution, it could be – in certain situations – a reasonable solution, if the other choice would be to wait for hours before being able to obtain access to a lawyer after being arrested, for example. In order to do this, more video conferencing devices would be needed.
France	The Directive 2013/48/EU on the right of access to a lawyer has not yet been implemented in French internal law so far (latest date is 26/11/2016). However, French law already answers to certain requirements of the directive. Information on access to a lawyer is then not performed as soon as the accused is deprived of liberty (as in Miranda Case in the US), but at the beginning of the custody, information concerning access to a lawyer is provided with the first interview by the police. When the person as mentioned that he or she wants to have access to a lawyer, a starting delay of 2 hours is granted to the lawyer to assist his/her client. During this delay, no interview can be performed (article 63-4-2 du CPP). When the lawyer arrives, whatever the importance of the file may be, he or she has 30 minutes to discuss with the client in a confidential room (art.63-4). This delay is usually insufficient to listen to the client and perform a decent legal analysis of the case. The presence of the lawyer is then required to all interviews by the police and cross-interrogations unless the questioning is only related to identity matters (which can be difficult in case of proceedings regarding false identity).
Germany	

Greece	Under Article 99A of the Greek Code of Criminal Procedures, there is immediate information about the right of access to a lawyer and the other rights of the defence. The suspect or accused needs to be informed from the beginning about this right and preferably in writing in the language he/she understands. This does not occur in all cases, especially in police questioning. In case of summons for apology, such right should be announced together with the summons.
Hungary	It would be essential that the lawyer shall be informed in such time/manner that enables him/her to be present at the hearing. During the investigation stage, it is very common that the lawyer is informed about the hearing in such a manner/time (e.g. fax sent to the law office during the night about the hearing on the next early morning) that he/she is not able to attend. This problem is not present in the judicial stage. In its decision Nr. 8/2013. the Hungarian Constitutional Court declared that in case the time between the notification of the public defender and the questioning is not sufficient, and therefore the defender can not be present, any confession on the questioning by the suspect can not be used in the procedure.
Ireland	The replies in relation to Ireland are especially qualified. While Ireland is not automatically bound by measures in relation to justice and home affairs it had voluntarily opted into the earlier measures A and B. It is believed that the intention was to voluntarily opted to measure C also and a committee had been established under the chairmanship of Moling Ryan, Chair of the Civil Legal Aid Board to examine the cost implications of full compliance. A copy of that report is attached to these replies. Separately a committee under the chairmanship of Judge Esmond Smith examined the whole question of interviewing in Garda Stations (police custody) and prepared a number of reports (not yet public). Despite this preparatory work Ireland has not in fact opted into measure C and will therefore only be entitled to opt in if it will comply with a full audit of the infrastructure insofar as the protections are concerned. That is clearly a long way off Separately there was a significant case decided by the Irish Supreme Court in March 2014. The twin cases of White & Gormley, decided together, indicated by obiter dictum that in a future case the Court might very well declared inadmissible evidence obtained in police custody if there was not an lawyer present during questioning. The response was a guidance issued by the Director of Public Prosecutions to An Garda Siochana, the national police force, to the effect that in future persons detained in custody should be advised of their right to have a solicitor present with them and be accorded that right. The guidance notes issued by An Garda Siochana to its own members in that regard are also attached to these replies. There is some evidence, although it is too early to speculate that this has led to an increase in the number of persons being asked to attend voluntarily at police stations for interviews albeit under caution. In the view of some this obviates the requirement for a police man to advise a suspect of the right to have a solicitor present during questioning. This mirrors the controversial US decision where Miranda rights, similar rights applying to persons in custody, do not apply to persons being interviewed at their own homes for instance. The relevant decision in X is attached. Subject to the foregoing the following are the replies to the question. a. Where the guidance issued by the Director of Public Prosecutions is followed there would be no further change required to national law practice to adapt to the requirements of measure C.
Italy	In coincidence with time limit for the letter of rights
Latvia	No changes needed, access to a lawyer is provided without undue delay.
Lithuania	According to Lithuanian law, the suspect has a right to a lawyer from the moment of his arrest or from the moment of his first interrogation. The pre-trial investigation officer, the prosecutor and the court have an obligation to ensure the opportunity for the suspect or accused to grab this right.

Luxembourg	First before the implementation of concerned directive into national law, persons put under criminal procedure and auditioned by the police or interrogated by a magistrate may effectively rely on the rights offered throughout this legislation. On the other hand ones has to say that persons under police custody as well as accused person have in practise the right to be assisted by a lawyer. Articles 39 and 81 (2) Code instruction criminelle The recent jurisdiction of CEDH in the AT vs Luxembourg case of 9 of April 2015 underlines the minimum guidelines to be applied, even if aces to the case file is still not regarded by the afore mentioned court as a real and effective defence right. The strict observations of the requirements listed up by the court should be sufficient to improve the situation of persons confronted with the authorities in charge of the proceedings.
Malta	No information
Poland	Firstly, it 's necessary to note that the implementation of the EU directive 2013/48 into Polish legal system shall have an impact on the provisions concerning the right to a lawyer included in two codes: The Code of Criminal Proceedings of the 6th of June, 1997 (Journal of Laws of the 4th of August, 1997 No. 89, item 555 with subsequent amendments) as well as the Code on Proceedings on Petty Offences of the 24th of August, 2001 (consolidated text – Journal of Laws of the 26th of March 2013, item 395 with subsequent amendments). The latest amendments of these two codes also have brought modifications in the field of regulations regarding the right of access to a lawyer. The right to a lawyer (to a defence lawyer) in the light of the Polish Constitution of the 2nd of April, 1997 (the Article 42 section 2) and the judgments either of the Constitutional Tribunal or the Supreme Court shall be even vested in persons who are not formally suspects (i.e. 'persons with formal criminal charges') or accused, but also in persons who are potentially suspected and the probability that they become formally suspected is very high. On the grounds of regulations of the Code of Criminal Proceedings (see the Article 6 CCP in relation with the Article 71 CCP), the right to a lawyer (defence lawyer) is vested in persons who are suspects (i.e. formally suspects) and accused persons. A detainee (a person potentially suspected) – on the grounds of the Article 244 § 2 CCP – has the right to assistance of a lawyer (he or she is promptly informed about such right). In turn, the Article 245 § 1 CCP states that a detainee, on his or her demand, shall have a possibility of prompt contact – in an available form – with a lawyer (an advocate or a legal advisor) as well as a possibility of a prompt and direct communication (conversation) with a lawyer. In the light of the Article 4 of the Code on Proceedings on Petty Offences, the right of access to a lawyer (defence lawyer) is vested not only in an accused person for the petty offence before the court but also in a person who is a subject to explanatory proceedings and shall be immediately questioned. In turn, in the light of the Article 46 § 1 and § 4 CPPO – a detainee in the context of the proceedings on petty offences has the right to contact and direct communication with a lawyer (an advocate or a legal advisor). It's worthy to remark that a suspect has the right to a defence lawyer in the preparatory proceedings and according to the Article 300 § 1 CCP he or she shall be informed about this right before the first questioning. (A person becomes formally suspected after presentation of charges - see the Article 71 § 1 CCP). Due to the Article 301 CCP, on the requirement of a suspect, he or she shall be questioned in presence of the established defence lawyer. (However, the default of appearance of a defence lawyer doesn't stanch the activity of examination of a suspect). In practice, the authority conducting the examination shall make possible that a defence lawyer might take part in the examination only in a situation when a suspect has established (chosen) a defence lawyer (or he or she has a defence lawyer appointed by the court). The authority conducting the examination isn't obliged to adjourn this activity if a suspect didn't established a defence lawyer. If a suspect is examined without the participation of a defence lawyer during this activity, he or she – after establishing of a defence lawyer - is entitled to require the examination once again and this time with the participation of a defence lawyer. The right of a suspect to require the examination with the participation of a defence lawyer is realized when the examination with such participation has been ended up. A person has the right to defence lawyer as an accused in the proceedings before the court. In some situations (precised by the criminal proceedings regulations) the assistance of a defence lawyer is mandatory (see the Articles 79 § 1 and 80 CCP). If a suspect or an accused doesn't have a defence lawyer chosen by him or her, he or she is entitled to have a defence lawyer appointed by the court not

	only in a situation when the lack of a chosen defence lawyer is the result of his or her adverse material situation – see the Article 78 § 1 CCP as well as the Article 80a § 1 and § 2 CCP. None of provisions of Code of Criminal Proceedings (concerning a suspect's or an accused person's right of access to a lawyer) includes an evident and explicit demand that such access (or a possibility of such access) shall be ensured promptly or without undue delay. According to the Article 244 § 2 CCP, a detainee (a person potentially suspected and detained) shall be informed promptly after detention among others about his or her right to assistance of a lawyer. In the Code on Proceedings on Petty Offences (the Article 46 § 1 and § 4) a detainee shall be promptly informed (after his or her detention) about his or her rights, including the right to the contact and direct communication with a lawyer (an advocate or a legal advisor). A person who is a subject to the explanatory proceedings (in case of a petty offence) is entitled to the assistance of a lawyer (a defence lawyer) starting from the moment of questioning of such person after notification to him or her about the charges or after calling his or her on the submission of explanations in writing (the Article 4 § 2 CPPO). The person shall be informed about the right to assistance of a defence lawyer. Such information is given before the questioning or together with the calling on the submission of explanations (making statement) in writing (the Article 4 § 2 an § 3 CPPO). The Article 46 § 4 CPPO states that a detainee shall have, on his or her demand, a possibility of contact (in an available form) with a lawyer (an advocate or a legal advisor) and a possibility of direct communication (conversation) directly with such a lawyer. This provision should be completed by the word 'prompt' concerning the contact and direct communication (conversation) with a lawyer (i.e. possibility of prompt contact – in an available form – with a lawyer and a possibility of prompt, direct communication/conversation with a lawyer). Unfortunately, the proper regulation of CPPO concerning the questioning of a person during conducting of explanation acts in case of a petty offence (Article 54 § 6), doesn't provide for the participation of a lawyer in questioning. According to the standard of the EU directive 2013/48 – the right to a lawyer shall be guaranteed also on the stage of explanation proceedings. According to the Article 84 § 1 CCP the establishment of a defence lawyer by a suspect or an accused person or the appointment of a defence lawyer by the court are the source of the defence lawyer's entitlement to undertake the activity in the whole criminal proceedings, not excluding activities undertaken after that the court's judgment has become final. It means that a defence lawyer is entitled to assist a suspect or an accused person in each evidence activity, like, for instance, identity parades, confrontations or reconstructions of the scene of a crime. The Article 316 § 1 of the Polish Code of Criminal Proceedings of 1997 states that if the activity of an inquiry couldn't be repeated during the proceedings before the court (during the trial) a suspect and his or her defence lawyer (if such a lawyer has been established in the criminal case) shall be allowed to participate in the activity (however, excluding the situation of a danger of losing or deformation of the evidence in case of a delay). In turn the Article 317 § 1 CCP states that a suspect and his or her defence lawyer (if such a lawyer has been established in the criminal case) shall be allowed, on their demand, to participate in other activities of an inquiry. However, such participation might be exceptionally limited – by the decision of a public prosecutor - on the grounds of the important interest of the inquiry (see the Article 317 § 2 CCP). The activity of identification of a suspect or an alleged offender - a person potentially suspected in criminal proceedings (the Article 74 § 3 CCP) and an alleged offender of a petty offence in proceedings concerning petty offences (the Article 20 § 3 CPPO) is regarded as unrepeatable one. However, the above mentioned Article 316 CCP doesn't provide for the participation of lawyer of a person potentially suspected in the activity of identification. There is also a lack of regulation like the regulation of the Article 316 CCP on the grounds of the Code of Proceedings on Petty Offences. In Polish doctrine of criminal proceedings law there is an opinion that the Article 316 CCP shall be amended. New content of this regulation shall include the following aspects: 1) a suspect shall have a possibility to establish a defence lawyer before the activity of identification; 2) there should be guaranteed a possibility of participation of a lawyer in the identification of a person potentially suspected. Similar amendments – regarding alleged offender of a petty offence - shall be also introduced to the CPPO. Also, when we take into account the Article 317 CCP and criminal proceedings acts like reconstruction of the scene of a crime with the participation of a suspect or a person potentially suspected as well as the act of confrontation with the participation of a person potentially suspected we can see the need of amending the current contents of the Article 317 CCP in the same direction as it is postulated in the context of the Article 316 CCP (see: A. Klamczyńska, T. Ostropolski, Prawo do adwokata w dyrektywie 2013/48/UE – tło europejskie i implikacje dla polskiego ustawodawcy, 'Białostockie Studia Prawnicze' 2014, vol. 15, pp. 157 - 158).

	The above mentioned remarks show that the current regulations of the Polish law concerning the issue of the right of access to a lawyer don't overlap themselves in a full scope with the legal standard proposed by the directive 2013/48/EU.
Portugal	In Portugal, in the pre-trial stage, a lawyer is provided to the accused and the lawyer can speak with the accused in privacy. However, the nomination should be faster.
Romania	
Slovakia	Relevant legislation: Criminal Code of Procedure No. 301/2005 The Slovak Criminal Procedure Code does not formally recognize distinction between a suspect and an accused and stipulates that any person reasonably suspected of having committed a crime shall be formally accused by authorities (police investigator or prosecutor). But in fact the Slovak Criminal Procedure Code regulates rights of person who is suspect and still not accused. The accused, from the commencement of the proceedings held against him (meaning from the moment the suspect is notified of the resolution to file charges against him) shall have the right to elect and consult a counsel also in the course of procedures carried out by the bodies involved in criminal proceedings or by the court (sec. 34). Along with the notification of charges, the suspect is being informed of the right of access to a lawyer (either by choice or having a lawyer assigned by court), of the right to have the lawyer present during questioning and on the right to remain silent. Rights of suspects: In the course of procedures preceding the commencement of the criminal procedure (pre-trial stage, sec 196 CCP) when the prosecutor or police officer hear the person on the basis of a criminal report or other report about the circumstances suggesting that he committed an offense, questioned person is entitled to legal aid of a lawyer. Sec 85 CCP: In case of detention of a person, who was caught committing a crime or immediately after the crime, the detained person shall have the right to choose a defence counsel and to consult him already at the moment of detention, and to request the presence of the defence counsel at the interrogation. According to Sec 37 para 1 CCP (mandatory defence) the accused shall have a defence counsel already during pre-trial proceedings if he is remanded in custody, serves an imprisonment sentence or is held for observation at a medical institution; is deprived of legal capacity or his legal capacity is restricted; is a juvenile or is an escaped. A counsel shall be mandatory also if the court or a prosecutor in pre-trial proceedings deems it necessary because they are in doubt whether, in view of his physical or mental handicap, the accused is capable of proper defence or if proceeding is held in respect of an offence punishable by the sentence of a minimum 10 years of imprisonment. If the accused has no counsel in a case where the counsel is mandatory, he shall be given a time limit to elect one. If he fails to elect a counsel within this time limit, he shall be promptly assigned a counsel by the judge, during the period in which the grounds for mandatory defence apply. No changes necessary in this respect, access to a lawyer is secured without undue delay.
Slovenia	The right of access to a lawyer applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.
Spain	None.
Sweden	Proposal on the implementation on the directive has been presented in the Governmental legislative memorandum on the right to defence counsel (Ds 2015:7) According to Swedish law, a lawyer can either be appointed by the suspect, private defence counsel, or by the court, public defence counsel. Partly different provisions currently apply for these two categories of counsels.

	Following a request from the the Bar Association that the same standard of rights to a lawyer shall apply regardless whether the lawyer is a private defence counsel or a public defence counsel, at least when the private defender is an advocate, additional legislative amendments have recently been proposed on this matter. The suspect has a right of access to a lawyer from the point in time when there is a reasonable suspicion that the person has committed an offence. The right entails a right to be assisted by the lawyer in preparing and conducting his or her defence at every stage of the judicial proceedings. In principle, the Swedish legislation complies with the requirement of prompt access to a lawyer. However, a point can be raised in regard to the first interrogation during the investigation, especially when the suspect is apprehended. When a suspected person is apprehended, an interrogation shall be held as soon as possible. At this stage the suspect rarely, if ever, has access to a lawyer before or during the interrogation. It can be argued whether the existing legislation/practice corresponds with the rights provided for under Article 3.2 (a) and 3.3 (a)-(b). In this regard it shall be noted that the Prosecutor General and the Swedish Bar Association have requested a legal amendment in order to ascertain the right of access to a public defence counsel during non-office hours. There have also been recurring occasions when arrested juvenile suspects have not been assisted by a lawyer during the first interrogation. The Prosecutor General is currently in the process of issuing new guidelines in order to improve and ascertain juvenile suspects´ right to a defence counsel at every stage of the proceedings.
The Netherlands	No changes need to be made - access to lawyer is already guaranteed immediately from the moment the person becomes a suspect, and before any questioning (article 27c NCCP).
UK	**England and Wales** The United Kingdom has chosen to opt out of the adoption of the Directive [preambular paragraph 58]. The current position as regards access to a lawyer will therefore be set out in a general manner in response to Question 10 of this questionnaire.
	Scotland
	Northern Ireland

(b) the stages for which provision is made (i.e. all the stages and proceedings mentioned)?	
Austria	None
Belgium	No specific change needed.
Bulgaria	In my view, no changes are needed as regards the stages of criminal proceedings for which access to a lawyer is provided. Under Bulgarian procedural law, access to a lawyer is provided in both pre-trial and trial proceedings and not depending on the gravity of the accusation. *Moreover, access to a lawyer is even guaranteed in cases of minor crimes where deprivation of liberty cannot be imposed as a sanction (please compare with Article 2.4(b) of the Directive). This is an example of good legislative approach and good practice in the matter.*
Croatia	No specific change needed, see the previous answer.
Cyprus	The said right fully applies to all the stages and proceedings mentioned, where the suspect or accused person is deprived of liberty. In case he/she is not arrested the police is not obliged to inform the suspect or accused of his/her right of access to a lawyer.
Czech Republic	See the previous answer.
Estonia	No changes need to be made -- access to lawyer is already guaranteed at all stages of the proceedings.
Finland	Under this head we don't see problems.
France	The presence of a lawyer is never an obligation, but always prescribed by the CPP during custody (63-3-1), before the Investigating Judge (114), before the "Tribunal correctionnel" (417). The presence of a lawyer is mandatory only in front of the Cour d'assises (article 317), the highest Criminal court in France which deals with the most serious offenses (from the 10 years of prison until perpetuity).
Germany	
Greece	According to the Greek Code of Criminal Procedures (Articles 99A, 104 etc.) the provision is made for all stages.
Hungary	See above.
Ireland	b. In Irish national law we do not have confrontations per se. Neither do we have reconstructions of the scene of a crime. Even prior to the Director of Public Prosecutions guidelines in Gormley and White it was routine for solicitors to be invited to accompany their clients when identification parades are being held. Solicitors play an important role in identification parades in establishing precisely what description the purported identifying witness gave of the person whom they are about to identify and ensuring that the parade was composed of persons of a similar description. It also served to ensure that the suspected person was not isolated within the parade by virtue of his being the sole person matching the stipulated criteria. Solicitors are entitled to be present before questioning of suspects. In those parts of the Irish law of evidence which provide for inferences to be drawn.An inference cannot be drawn without a person being advised in advance of their entitlement to consult a solicitor and in fact the consultation taking place unless the suspect waives that right.
Italy	As above
Latvia	No changes needed, access to a lawyer is provided in all the stages and proceedings mentioned.
Lithuania	The provision is made for all the stages and proceedings mentioned.
Luxembourg	Aces to a lawyer is granted at the - stage of police hearing (including nowadays the right to speak confidentially to the person you assist) - stage of first interrogation (including nowadays the right to speak confidentially to the person you assist) -at the stage the case is treated by the tribunal concerning the merits this confidential conversation is guaranteed especially if persons are detained.

	So in Luxembourg assistance of a lawyer, in the meaning of presence of a lawyer, is assured at all the different stages of the procedure except the person put into proceeding clearly renounces to this right
Malta	No information
Poland	The right of access to a lawyer in Polish criminal proceedings and proceedings concerning petty offences – as it is regulated in appropriate regulations of the Code of Criminal Proceedings of 1997 and the Code on Proceedings on Petty Offences of 2001 – outstretches itself on all stages of the proceedings and refers to detainees and of course to suspects and accused persons. However the proper regulations not always contain the demand on prompt (or without undue delay) access to a lawyer. It seems, that on the grounds of the Polish criminal proceedings the issue of the access of a suspect to a lawyer shall correspond clearly with the following principles: a suspect is entitled to be examined with the participation of a lawyer, this right shall not be the right of one-time character and it shall concern every examination of a suspect in the course of preparatory proceedings, regardless the reason of the next examination, a suspect has the right to contact with a lawyer before the examination, if a defence lawyer isn't established, it's necessary to enable a suspect the establishment of a defence lawyer or appoint such lawyer and give them possibility to have a contact to each other. The next required principle is that justified non-appearance of a defence lawyer shall not stanch the examination.
Portugal	No information.
Romania	
Slovakia	The right applies to all the stages and proceedings from the moment of being officially notified until the conclusion of the proceeding (pre-trial period as explained above included). Moreover, in case of detention, the legal counsel is mandatory without the possibility of revocation irrespective of the type of offence.
Slovenia	All the stages and proceedings.
Spain	None.
Sweden	See the answer under (a) above.
The Netherlands	Access to a lawyer is not yet granted at the stage of police hearing, although usually permitted by the police without an obligation considering that matter.

(c) the manner of provision (e.g. allowing a practical and effective defence, in privacy etc)?	
Austria	When questioning, the participation of the lawyer is limited to be present and to ask questions (after the police have finished their questions). The lawyer may not interfere or interrupt the suspect when he answers questions. This not a practical and effective defence during police interrogations.
Belgium	No specific change needed. The Belgian law organizes already a practical and effective defence, and private and confidential meeting with a lawyer before any questioning as suspect by the police (see article 47bis, § 2, of the Belgian criminal procedure Code.
Bulgaria	No changes are needed. Bulgarian procedural law provides for sufficient time limits in which the accused persons could effectively organize their defence, find a lawyer (lawyers) of their choice, meet and authorize their lawyer(s) in private. No practical problems have been met in this respect.
Croatia	No specific change needed, see the previous answer.
Cyprus	The Rights of Persons Arrested and Detained into Custody Law of 2005 makes, inter alia, detailed provisions about: (i) information being imparted to the suspect about his/her right of access to a lawyer, (ii) the exercise of the said right, (iii) the record that must be kept by the police on the subject, (iv) unimpeded access of the detainee whether suspect or accused to his/her lawyer and the confidentiality of communication. The said law also makes provision for the presence of the suspect's lawyer during police questioning if he/she is under 18 years or suffers from mental incapacity. The said procedures are guaranteed because if a member of the police force breaches the right of a detainee of access to a lawyer then he/she will be (a) criminally liable punishable with imprisonment up to six months or a fine not exceeding 1700 Euros, (b) disciplinarily liable under the police law. Be it noted that a member of the police force interfering with the unimpeded access of the accused to a lawyer is likewise disciplinarily liable. Furthermore a right is conferred upon the suspect and the accused whose rights are violated to damages against the State and the person or persons responsible for breach or denial of those rights independently of whether he/she has suffered any material damage.
Czech Republic	Suspects and accused persons have the right to consult their defence lawyer also during acts performed by the law enforcement authority (e. g. questioning). However, they cannot consult their defence lawyer about how to reply to the already posed question. The defence lawyer may pose questions to persons who are questioned, including his client. Suspects and accused persons may speak with the defence lawyer without a third person being present also when they are in a custody or a prison. They may request to be questioned with their defence lawyer being present and so that their defence lawyer participates also in other acts of the pre-trial stage (see Section 33(1), 165(2), 76(5)(6), 179b(2) CCP). Only when the suspect is giving explanation at the Police according to Section 158(5) CCP, he cannot consult his lawyer during this act, but his lawyer may participate in. What burdens in practice the defence is that the defence lawyer cannot ask any questions when his client is giving explanation at the Police according to Section 158(5) CCP.
Estonia	No changes need to be made -- lawyers are already allowed to be present, consult in privacy with the client, make statements during questioning, etc.
Finland	Usually privacy is not an issue anymore. Only some times back when suspects were detained at police stations, the lawyer and client could only communicate through a glass wall via telephone. The Ombudsman had criticized this practice and at least generally speaking there are not problems – at least on a day-by-day basis. In some courts – for example the largest court in Finland, Helsinki District Court – the facilities for lawyers to meet with their clients are far from par. In Helsinki, there is only one room in which lawyers, one after the other, meet with their respective clients, in many cases for the first time. Given that there may be 20-30 detention hearings (or even more) in a day, this is hardly a practical and effective way of arranging the defence. Another problem exist during interrogations. There is still a provision in the Criminal Investigation Act that allows for the lawyer being present to only with the permission of the investigator to put questions. The investigator may also order that the questions are put via him. The counsel may even be removed from the interrogation (although very seldom applied in practice; maybe because most of the lawyers sit quiet and listen and only put one or two questions at the end), if he is considered to interfere with

	the interrogation. Even an advise to the client not to answer a specific question has been interpreted to be interfering with the interrogation. We would need to get a change in law that would allow the counsel to more actively participate during the interrogation, although fully understanding that unnecessary interruptions still wouldn't be allowed.
France	As already explained in the questionnaire of measure B, the assistance of a lawyer in custody in France is not effective for the reason that the lawyer does not have an effective access to the criminal file during investigations. The file is only composed of minor interest documents and doesn't allow the lawyer to provide the whole range of services specifically associated with legal assistance (see CEDH, 13/10/2009, n° 7377/03, § 30 à 33, DAYANAN vs TURKEY). Before the Investigating Judge, access to file is provided a few time before the hearing disregarding the importance of the file. Before the Tribunal correctionnel, only some specific provisions state that the file should be provided to a lawyer, under certain circumstances (article 388-4 & R. 155). Before the Cour d'assises, article 279 grants a full access to the file.
Germany	
Greece	The manner of provision is sufficient. The practice particularly in the investigative stage is different.
Hungary	See above.
Ireland	c. There is controversy in relation to the manner of provision. This is because there is not a rota system established centrally to ensure that there are always qualified solicitors available to perform the task of advising suspects in custody. The problem is not acute in the main population centres such as Dublin, Cork or Limerick where there is an abundant supply of solicitors and where there is competition for defence work among legal firms. This ensures that it is in the commercial interests of each solicitor's practice to ensure that there are solicitors available to attend Garda Stations even at unsocial hours. The situation is quite different in more remote areas especially during unsocial hours. The individual police station has to seek to secure a lawyer if the suspect has not identified a lawyer of their own who will attend. The relative shortage of experienced lawyers means that the police routinely resort to contacting qualified solicitors but who have no real experience in criminal law. This is a differential in terms of quality of representation that is disadvantageous to have suspected person. The solution would be relatively straightforward in establishing a rota system whereby experienced lawyers were always on call in a given geographical area but naturally this would come at a cost to Government as the solicitor on call would have to be paid for being on call. For this reason the Government have not taken this additional and essential step.
Italy	Yes
Latvia	No changes needed, access to a lawyer is provided allowing a practical and effective defence, in privacy etc.
Lithuania	In practise, the time gap emerge from the moment of the arrest of the suspect to the moment when the lawyer finds a possibility to come to the police station or the prosecutor's office. Usually the investigators or/and prosecutors are using this gap to make some kind of psychological pressure on the suspect.
Luxembourg	Concerning the practical and effective defence one has to underline that, the assistance of a lawyer in Luxembourg is not effective, for the simple reason that the lawyer does not have aces to the criminal file before he sees the person put under proceedings. Therefore, the only effective assistance a lawyer can give in Luxemburgish criminal proceedings at the stage of police hearings and at the time of first interrogation by the investigation judge is to advice his client to keep silent. This point seems to be shared by the CEDH in the afore mentioned decision of AT vs Luxembourg

Malta	No information
Poland	The current regulations of the Code of Criminal Proceedings of 1997 and the Code on Proceedings on Petty Offences of 2001 regarding to the right of access to a lawyer also include reservation that during the contact of a proper person (a detainee in proceedings on petty offences or in criminal proceedings, a suspect or an accused person temporarily arrested) with his or her lawyer, the representative of proper authority (i.e. e.g. a police official or a public prosecutor) might be present at it. Unfortunately, one of provisions giving the entitlement for representatives of the authority to be present during the contact of a detained person with his or her defence lawyer doesn't precise the reasons for such presence (see the Article 46 § 4 CPPO). In turn, provisions of the Code of Criminal Proceedings (the Articles 73 § 2 and § 3 as well as 245 § 1) include demand that the presence of the entitled authority during the contact of a person with his or her defence lawyer (or – if a person is temporarily arrested – also the supervision of his or her correspondence with a defence lawyer) must have its grounds in particular, exceptional situations. In case of proceedings before the court, current regulations don't include the possibility to apply the aforementioned reservation in the situation of personal contact between an accused person and his or her defence lawyer (so such contact is possible without the reservation of presence of a proper authority). It seems that in Poland – on the grounds of criminal proceedings – the practical and effective defence of a detainee, a suspect (an accused person – not only temporarily arrested) is allowed in the light of regulations giving only exceptional possibility of presence of the proper authority during the communication between a person involved in the criminal proceedings and a lawyer. The same remark cannot be repeated without doubts when we consider the situation of the access of a detainee to a lawyer on the grounds of the proceedings concerning petty offences. Too general regulation gives the proper authority (a police official) the opportunity to be present during the contact of a detainee with his or her lawyer without giving any reason of such presence. So, the defence in such situation might be not effective or just constricted.
Portugal	No information.
Romania	
Slovakia	Upon request or before commencement of any procedure, the accused may consult a lawyer. The accused, however, shall not have the right to consult his counsel on how to respond to question raised during the interrogation. He may ask to be interrogated in the presence of his counsel and to have the counsel present also when other procedures of pre-trial proceedings are conducted. If he is apprehended, remanded in custody or serves an imprisonment sentence, he may speak with his counsel in the absence of a third person; this shall not apply to a telephone call of the accused with his counsel during serving custody, the conditions and mode whereof are set forth under a separate regulation. In the proceedings held before the court, the accused shall have the right to examine witnesses who were moved by him or upon his consent by his counsel, and put questions to the witnesses. The accused may exercise his rights on his own or via his counsel. Lawyer attends all the investigative or evidence-gathering acts. Acts undertaken during the pre-trial period must be repeated during the trial period. Presence of a lawyer is always noted in writing in the official record of the criminal procedure.
Slovenia	The manner of provision is such that allows a practical and effective defence; private communication with a suspect, etc.
Spain	In Court stages, the defense is effective. In police stations it is not, because of the following: (a) the police do not allow access to the documents in their files regarding the case. Only a few documents are shown, but not consistently. The police officer makes his/her own assessment of which documents are going to be shown to the arrest person or his/her lawyer. This assessment is always very restrictive; and (b) the lawyer can interview his/her client prior to the questioning, but for a very little time, and with a very poor privacy (a lot of times, in open room or corridor under the view of the police officer, who could hear the conversation).
Sweden	Contact and communication - Pursuant to different provisions in Swedish law the suspect has a right to meet and communicate with his or her lawyer. This applies at all stages of the proceedings when the

	suspect is not deprived of liberty. When the suspect is deprived of liberty the right to have meetings in private with the lawyer is expressly ensured only when the person is arrested or detained. As been highlighted by the Bar Association and also proposed in Ds 2015:7 an amendment is needed, ensuring the right to meet in private also when the suspect is apprehended. When the defence counsel is appointed public defence counsel, the right to speak and communicate with the lawyer is unrestricted. When the defence counsel is appointed private defence counsel, the right to meet and communicate may be limited when the suspect is deprived of liberty (see Question 2). Legislative amendments have now been proposed in order to ensure that the same standard of rights shall apply regardless of the way the advocate has been appointed. Questioning – During police interrogation, there is an unrestricted right to be assisted by a lawyer, if appointed public defence counsel. When assisted by a private defence counsel this right may be subject to limitations (see Question 2). During court proceedings, the suspect or accused person has an unrestricted right to be assisted by a lawyer.
The Netherlands	When there in fact is access to the questioning, the participation of the lawyer is limited to be present. The lawyer may not interfere or interrupt the suspect when he answers questions. This not a practical and effective defense during police interrogations and not according to the article 3.3 sub b of the Directive.

	Question 2. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to derogations from the right to a lawyer regarding:*** *(a) the circumstances in which temporary derogations are granted (i.e. only exceptional circumstances)?*
Austria	In case of deprivation of liberty and until brought to prison, the access to a lawyer may be limited to mandating a lawyer and a general legal information, if this seems necessary to prevent impairment to the investigation or to means of evidence (§ 59 (1) Austrian Code of Criminal Procedure, StPO). There is no effective judicial review of such a decision, which may be taken by the police, but only an ex-post control.
Belgium	The Belgian Law organizes a possible derogation to the right to have a previous and private meeting with a lawyer before the very first questioning of a suspect deprived of his liberty, but only in case of "exceptional circumstances" and "for imperative reasons". The Belgian lawmaker has however not expressively defined these possible "exceptional circumstances" nor "imperative reasons". Nevertheless, the Belgian lawmaker requires in that respect a duly reasoned decision taken on a case-by-case basis, by the Prosecutor or by the investigating Judge (this decision will be in the latter stage of the proceeding subject to a judicial control by a court) (see article 2bis, § 5 of the law of 20 July 1990 relating to temporarily detention). The Belgian lawmaker stipulates besides that none may be sentenced on the basis of a questioning made without to have had the possibility of a previous and confidential meeting with a lawyer (see art. 47bis, § 6 of the Belgian criminal procedure Code).
Bulgaria	Bulgarian procedural law does not provide for temporary derogations from the right to access to a lawyer in the sense of Article 3.5 and Article 3.6 of the Directive. Therefore, in my view, the "temporary derogation" clauses of the Directive do not need to be transposed into Bulgarian national law and in this respect Bulgarian authorities could rely on the "non-regression clause" of Article 14 of the Directive.
Croatia	There are no provisions in Croatian CPA regarding temporary derogations of the right to a lawyer as prescribed in Article 3.5. of the Directive. Therefore, no changes are needed in that regard. Croatian CPA has a provision as one proscribed in Article 3.6.of the Directive, so therefore no changes are needed.
Cyprus	There are no provisions in our current legislation for temporary derogations.
Czech Republic	I consider the wording of the existing exceptions in the domestic legislation as too vague and broad, in comparison to the rather strict wording of the Directive. Following exceptions are regulated in the domestic legislation. The defence lawyer is from the commencement of the criminal prosecution entitled to be present during the investigative acts, whose result may be used as evidence in the proceedings before the court, unless "execution of such act cannot be postponed and the informing of the defence lawyer cannot be secured" (Section 165(2) CCP). When the suspect is detained, he may request his defence lawyer to participate during his questioning. The CCP in 76(6) CCP stipulates that this right will not apply if the defence lawyer is unreachable within the time-limit of 48 hours when the police authority has to question the detained person and submit the case to the prosecutor to propose the court taking of this person into custody. During the trial stage, exceptionally, due to important grounds, the court may question a person or carry out another evidence outside of the hearing. The defence lawyer is entitled to participate in it, unless

	"the execution of such act cannot be postponed and the informing of the defence lawyer cannot be secured" (Section 183a(1) CCP). Application of the above-mentioned exceptions is rather rare in practice, however, sometimes they become part of the Police´s tactics. What also happens, though again only rarely, is that the Police inform the attorney that e. g. a questioning will take place in two hours; if the attorney has other obligations and cannot send a properly prepared substitute either, he is formally informed about the date and place of the investigative act, but in fact cannot participate in it and the Police proceed without him being present.
Estonia	No changes need to be made -- our law does not provide for any derogations.
Finland	We are not aware of derogations to the right of access to a lawyer. However, as mentioned in the answer above, some times it is in practice very difficult to accommodate this. One more of an issue of principal is that there exists a provision in the Criminal Investigation Act that the head of investigation may, "due to weighty investigative reasons", forbid the counsel from being present when his client is being interrogated. We have no knowledge of this happening, but on a general level, the issue is of importance.
France	Please note that during custody an exclusion is allowed by article 63-4-2 of French Criminal Procedure Code (in French, CPP) when the necessity of the investigations commands an immediate interview of the suspect, the presence of the lawyer can be postponed. It is a little bit difficult to understand how and when the necessity of the investigation does not command an immediate interview especially when the person is deprived of liberty. The scope of exclusion is therefore different compared to the directive aims. Article 706-88 allows also a temporary derogation for major offenses in case of imperious reasons to allow the collect or the conservation of evidence or to prevent an attempt to persons.
Germany	
Greece	Derogations from the right to a lawyer are not provided at any stage. On the contrary the court is obliged to appoint a lawyer, upon request, and the appointment for felonies is mandatory for all stages.
Hungary	No derogations.
Ireland	Existing Irish law provides for a questioning of a suspect to proceed in the absence of a lawyer in 4 instances. A copy of the provisions is annexed to this reply. As can be seen these exceptions go beyond what is permitted by the directive in so far as threats to property rather than to human life to justify a derogation. It is probable therefore that the Irish measure will be modified and if not will be challenged in the Courts.
Italy	When a person is deprived of liberty, the judge issuing the warrant can, on request of the Prosecutor, and with a written motivation, postpone the right of the arrested person, to meet his lawyer for a period not longer than five days, (Art. 104, ss.3 Criminal Procedural Code) This provision isn't consistent with recitals of the Directive on the specific cases of admissible derogations- In practise, the jurisprudence, has always stated that a derogation is legitimate to avoid that co-defendants agree on a common position, especially in cases of organizes crime.
Latvia	No changes needed, there are no circumstances in which temporary derogations are granted.
Lithuania	The Lithuanian Law does not foresee the possibility to derogate from the right to a lawyer. The suspect or the accused can make a decision to refuse the lawyer but in some cases the refusal from the lawyer is not an obligatory to the pre-trial investigation judge, the prosecutor and the court (e.g. the refusal from the teenager, from a person who doesn't speak Lithuanian language, etc.)
Luxembourg	Indeed the assistance of a lawyer is guaranteed in practise and this right is not waived neither at the police hearing nor at the hearing done by the instructing judge but may be temporary limited or

	suspended for special needs in relation with the investigations, but special written motivation is required in such cases.
Malta	Only exceptional circumstances
Poland	The Polish Code of Criminal Proceedings of 1997 – looking at its current regulations referring to the access to a lawyer – doesn't correspond with the standard of the directive 2013/48/EU in the scope of derogations from the right to a lawyer. It seems that on the grounds of the criminal proceedings in Poland the issue of the access of a suspect to a lawyer shall regard the following principles: a suspect has the right to be examined in the presence of his or her defence lawyer, such right isn't the right of a one-time character and it concerns each questioning of a suspect during the criminal proceedings independently from the reason of the subsequent questioning, a suspect has the right to communicate with his or her defence lawyer before the questioning; if a suspect hasn't established a defence lawyer yet, it is necessary to enable him or her the establishment of a defence lawyer or it's necessary to appoint such a defence lawyer by the court (regarding this issue - where the questioning will be following directly after the presentation of charges - the competent authority shall defer temporarily – for a due time – the questioning of a suspect; if a suspect is deprived of his or her liberty, he or she and his or her lawyer should have ensured the possibility of their reciprocal communication before the questioning), justified non-appearance of a defence lawyer defers the questioning. In Polish criminal proceedings there is pointed out a lack of precise and exhaustive regulation concerning the issue of admissibility of questioning of a suspect without ensuring him or her the full access to a lawyer. Such regulation – as exceptional one – seems to be needed. Also, in this context, in the system of Polish law concerning the right of access to a lawyer, precise provisions on the issue of temporary derogations need to be prepared (to fulfill the European Union standard in this field). The Article 245 § 1 CCP states that a detainee – on his or her demand – shall have a possibility to have – in an accessible form – a contact with a lawyer and a direct conversation (communication) with such a lawyer. In exceptional cases, motivated by specific circumstances, the proper authority may reserve its presence during the mentioned conversation (communication). The time limit of such reservation isn't determined. In the light of the Article 301 CCP a suspect – on his or her demand – shall be examined in presence of the established defence lawyer. Non-appearance of a defence lawyer doesn't stanch the activity of examination of a suspect. In practice this regulation isn't applied uniformly. On the basis of this regulation, the following rules could be identified: the obligation of making possible the participation of a defence lawyer in a questioning concerns only a defence lawyer who has been established; there is a lack of the obligation to defer a questioning in order to create for a suspect a possibility of establishing by him or her a defence lawyer; if a suspect has been examined without the participation of a defence lawyer, such suspect can demand to be examined again, in presence of established defence lawyer; non-appearance of a defence lawyer doesn't stanch the activity of questioning. It shall be stressed, that the proper amendment of this regulation needs the creation of the possibility to defer a questioning in the situation when a suspect hasn't got the established defence lawyer or in the situation when a suspect has got a defence lawyer but such lawyer didn't appear to take part in the mentioned proceedings activity and informed about the questioning – he or she has lodged forward a motion to defer the questioning (Cf. A. Klamczyńska, T. Ostropolski, Prawo do adwokata w dyrektywie 2013/48/UE – tło europejskie i implikacje dla polskiego ustawodawcy, 'Białostockie Studia Prawnicze' 2014, vol. 15, pp. 156 – 157). In turn, according to the Article 73 § 1 CCP, an accused person who is temporarily arrested can communicate with his or her defence lawyer in absence of other persons and also by correspondence. In Polish doctrine there is an opinion that such communication may be realized by personal meetings or by phone calls. By the way, communication between a suspect temporarily arrested and his or her lawyer by phone calls is confirmed by the content of the Article 217c of the Polish Criminal Executive Code of the 6th of June 1997 (Journal of Laws of the 5th of August, 1997 No. 90, item 557 with subsequent amendments). Due to the Article 73 § 2 CCP, a public prosecutor permitting for communication in the preparatory proceedings may reserve - in exceptional cases, if it's demanded by the interest of the preparatory proceedings – that he or she or another entitled person will be present during the mentioned communication. In turn, due to the Article 73 § 3 CCP, if the interest of the preparatory proceedings needs it, a public prosecutor may reserve – under particular circumstances – the supervision of correspondence between a suspect and his or her defence lawyer (in this context see also the Article 8a § 2 of the Polish Executive Criminal Code). According to the Article 73 § 4 CCP

	the mentioned reservations cannot be held and made after 14 days starting from the day of the application of the temporary arrest of a suspect. It seems that the reasons of temporary derogations – regarding their normative contents - shall be defined in a way which is better corresponding with the pattern provisions of EU directive 2013/48/EU. Taking into account the circumstances in which temporary derogations are granted it needs to be stressed that they shall be exceptional and dictated by the interest of the preparatory proceedings. 'Particularly motivated situation' is especially a situation generating a suspicion that contacts between a suspect and his or her lawyer (or their correspondence) might be used for illegal purposes (to obstruct the justice). 'The interest of the preparatory proceedings' means that the reservations are only available if they're necessary to ensure the realization of aims of preparatory proceedings (like detection and apprehension of other offenders or getting and securing the evidence in criminal case). In the light of opinions of representatives of Polish doctrine of criminal proceedings law, here, the principle of proportionality shall be fully respected. As a rule, practice in Poland keeps this standard of comprehension of the exceptional circumstances as well as the interest of the preparatory proceedings. According to the Article 46 § 4 of the Code on Proceedings on Petty Offences of 2001, a detainee shall have, on his or her demand, a possibility to contact - in an accessible form – with a lawyer (an advocate or a legal advisor) as well as to communicate (to talk) with such a lawyer directly. The authority which executes the detention can make a reservation that its official will be present during such communication. Unfortunately, neither the mentioned regulation of the Code of Proceedings on Petty Offences (nor other one in this code) introduces any reasons of such reservation. In the mentioned code, Polish law-maker hasn't indicated the time limits for such reservation. It means that in practice, the presence of a representative of the authority during the communication between a detainee and his or her defence lawyer is possible not only exceptionally and such reservation is not limited in time.
Portugal	There are no derogations from the right to a lawyer in Portuguese law or practice.
Romania	
Slovakia	The detained person shall have the right to choose a counsel and to consult him already at the moment of detention, and to request the presence of the counsel at the interrogation, unless the counsel cannot be reached within the time limit specified therein. "Unreachability" of the lawyer is the only ground for derogation from the right. A person can be detained only for the period up to 48 hours. The policeman and prosecutor shall proceed so as to enable handing over the detainee to the court within 48 hours from his detention or arrest (otherwise the person shall be released by the written duly justified order of prosecutor) and the court would assign a lawyer at the beginning of the trial period.
Slovenia	No derogation of the right to a lawyer exists in the Slovene law.
Spain	No changes need to be made.
Sweden	Derogation of the right of access to a lawyer concern situations when the suspected person is assisted by a private defence counsel. <u>Police interrogation</u> – During an interrogation of the suspect, a private defence counsel may assist only if the presence of the lawyer would not be of detriment to the investigation. Other derogations when assisted by a private defence counsel concern situations when the suspected person is deprived of liberty. The limitations may be applied in the following situations. <u>Meetings in private</u> - A private defence counsel is allowed to speak in private with the arrested or detained person only when it is approved by the leader of the investigation or when the court considers it would neither impede the investigation nor threaten order and security at the place of detention. Legislitive amendments have been proposed stipulating an unrestricted right to meet in private when the private defence counsel is an advocate. This right shall then also apply when the suspect is apprehended. <u>Communication</u> – The suspect may be denied the right to communicate with private defence counsel. The limitation can be applied in regard to correspondence and electronic communication (e.g. telephone calls, e-mail), and may be imposed if the communication would threaten order and security

	if communication or if it would impede the investigation. Legislative amendments have been proposed stipulating an unrestricted right to communicate when the private defence counsel is an advocate. The way of limiting the right of access to a lawyer based on how he or she has been appointed does not appear to be consistent with the Directive. At all events, limitations in a suspected person´s right to contact or communicate with a private defence counsel can hardly be motivated when the counsel is an advocate and a member of the Swedish bar.
The Netherlands	In case of deprivation of liberty and until the criminal case is presented in court by the prosecutor the access to a lawyer may be denied, if this seems necessary to prevent impairment to the investigation or to means of evidence (article 50.2 NCCP). The Dutch lawmaker has however not expressively mentioned that access to a lawyer only can be denied where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person or where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings. I consider the wording of the existing exceptions in the domestic legislation as too vague and broad, in comparison to the rather strict wording of the Directive.

(b) the stages of the proceedings at which temporary derogations are granted (i.e. only at the pre-trial stage)?	
Austria	None
Belgium	Yes, only at the pre-trial stage.
Bulgaria	Please see the answer to Question 2 (a).
Croatia	No changes are needed, as temporary derogations are granted only in pre-trial stage.
Cyprus	See answer to Question 2(a).
Czech Republic	See the previous answer.
Estonia	No changes need to be made -- our law does not provide for any derogations.
Finland	See previous answer. Also it is worth mentioning that there exists no general rule at other stages but the pre-trial investigation stage, in which derogation could be granted.
France	Only during custody. Before the Investigation Judge, he or she can only refuse to the lawyer the right to provide to his client the file (article 114). Otherwise, no derogations are possible.
Germany	
Greece	The same applies as above.
Hungary	No derogations.
Ireland	The denial of access to a lawyer is only possible in these limited circumstances during detention and prior to the trial stage.
Italy	Only for 5 days subsequent the execution of the warrant.
Latvia	No changes needed, there are no circumstances in which temporary derogations are granted.
Lithuania	The derogation from the lawyer, even temporary, cannot be granted under Lithuanian law.
Luxembourg	During the Pre-trial stage
Malta	Not regulated at law, desirable
Poland	In Poland – on the grounds of the Code on Criminal Proceedings - temporary derogations (if they were provided by specific regulations) are granted in preparatory proceedings (so, at the pre-trial stage). On the grounds of the Code of Proceedings on Petty Offences possible derogations from the full right to a lawyer are granted in the explanation proceedings (during conducting of explanation acts).
Portugal	No information.
Romania	
Slovakia	"Unreachability" of the lawyer as a ground for temporary derogation applies only at the pre-trial stage. In the light of the contradictory character of the criminal proceeding, all the procedures undertaken in the pre-trial stage must be repeated in the trial stage.
Slovenia	n/a
Spain	None.
Sweden	Derogations mentioned under Question 2(a) may be granted at all stages of the criminal proceedings, also after an indictment has been submitted to court.
The Netherlands	No changes have to be made, derogation can only be made at the pre-trial stage by the prosecutor.

(c)	*the compliance of derogations with the four conditions in the third paragraph above?*
Austria	None
Belgium	The authorized derogation complies nearly – but not totally - with the four conditions in the third paragraph above, since : i. “exceptional circumstances” and “imperative reasons” are required, which implicates thus that the said derogation will need to be proportionate and not go beyond what is necessary, taking indeed into account these “exceptional” circumstances and “imperative” reasons. ii. the derogation concerns only the first private and confidential meeting with a lawyer before the first questioning(s) of a person as suspected during the first 24 hours or 48 hours after his deprivation of liberty. The derogation is thus necessarily limited in time because it may legally not last longer than the first 24 hours or 48 hours after deprivation of liberty. iii. “not be based exclusively on the type or the seriousness of the alleged offence”. This condition is not expressively required in the Belgian internal law. The requirement of exceptional circumstances and imperative reasons does not seem enough to avoid possible assimilation of the seriousness of the alleged offence with an exceptional circumstances. iv. “not prejudice the overall fairness of the proceedings”. This condition appears to be met since, as already mentioned, the Belgian lawmaker stipulates that none may be sentenced on the basis of a questioning made without to have had the possibility of a previous and confidential meeting with a lawyer (see art. 47bis, § 6 of the Belgian criminal procedure Code).
Bulgaria	Please see the answer to Question 2 (a).
Croatia	No changes are needed, as temporary derogations are in compliance with the four conditions, although these four conditions are not strictly proscribed as in Article 8 of the Directive.
Cyprus	See answer to Question 2(a).
Czech Republic	See answer to the question 2(a). Wording of the Directive´s conditions seems narrower than of the domestic provisions.
Estonia	No changes need to be made -- our law does not provide for any derogations.
Finland	See previous answers.
France	The permitted derogations do not comply with the conditions of the directive for the reason that the “necessity of the investigations” does not cover a specific case but involves every criminal proceedings.
Germany	
Greece	The same applies as above.
Hungary	See above.
Ireland	The permitted Irish derogations do not comply with the conditions in the third paragraph.
Italy	See answer to question 2 (a) above
Latvia	No changes needed, there are no circumstances in which temporary derogations are granted.
Lithuania	The derogation from the lawyer cannot be granted under Lithuanian law.
Luxembourg	National law and practise concerning the eventual derogation of legal assistance comply with the four conditions contained in the above paragraph.
Malta	More rigorous adherence is desirable
Poland	Taking into account the four EU directive’s conditions concerning temporary derogation: its proportionality and not going beyond what is necessary, strict limitation in time, not basing exclusively on the type or the seriousness of the alleged offence as well as not prejudicing the overall fairness of the proceedings it should be said that – even if there is no direct recall to them in proper proceedings law provisions and they are replaced by general normative wordings – they could be overall interpreted.

	However not each of them. Derogations in the Article 245 § 1 CCP, in the Article 73 § 2 and § 3 CCP as well as in the Article 317 § 2 CCP should be proportionate and they shouldn't go beyond what is necessary. Also, they shouldn't prejudice the overall fairness of the proceedings and they should not be basing exclusively on the type of the seriousness of the alleged offence. These conclusions are derived from results of the interpretation of the mentioned regulations (especially of the demand on 'particular situations') and a general rule of the fairness of criminal proceedings. The condition that derogations shall be strictly limited in time is fulfilled only for the derogations placed in the Article 73 § 2 and § 3 CCP. The conditions of derogations created by the EU standard in the directive 2013/48 aren't fulfilled by the Article 46 § 4 CPPO. This regulation doesn't indicate the limitation of derogation in time and even it doesn't require 'particular motivation' of the derogation. This could contravene especially the condition of proportionality and necessity and in consequence – the principle of the fairness of proceedings. Required amendments of the Polish law shall respond to the European Union standard which is indicated by provisions of EU directive 2013/48.
Portugal	No.
Romania	
Slovakia	There is no special provision to this respect but it may all be subsumed under obligation to respect the fairness of the proceeding. Case law - Constitutional Court 85/2011 Pl. ÚS 112/2011 "...Derogation from the right to choose a lawyer, in other words right to counsel, may be allowed only if measures preventing the violation of the right of the accused to a fair trial are taken. European Court of Human Rights stated in its case law that right to legal assistance is not absolute and examples of acceptable derogation could be found in the ECtHR case law (...)"
Slovenia	n/a
Spain	There are no derogations.
Sweden	The circumstances under which the derogations may be granted cannot be in full compliance with the requirements set out in Article 3.6 and 8. Although decisions on limiting the right to meet and communicate with a private defence counsel are made on a case to case basis, such limitations cannot be considered proportionate nor necessary when the defence counsel is an advocate. When limitations are imposed they may also prejudice the right to an effective defence and a fair trial.
The Netherlands	See answer to the question 2(a). Wording of the Directive´s conditions seems narrower than of the domestic provisions.

(d)	*the authorisation process used for temporary derogations?*
Austria	There is a gap in the judicial review until the suspect is brought to prison, because the police may take the decision to prevent full contact with the lawyer and/or to supervise the contact with the lawyer. The decision of the police may be challenged (§ 106 StPO), but this is only an ex-post review.
Belgium	As mentioned above, such exceptional derogation may only be taken by the prosecutor or by the investigating judge, but no specific (dedicated) recourse is however organized against such decision. It is only at the occasion of the later stages of the proceeding that the suspect will have the opportunity to claim against such decision, a posteriori thus. A specific recourse should thus perhaps be necessary, taking precisely into account that such derogation takes place in exceptional circumstances.
Bulgaria	Please see the answer to Question 2 (a).
Croatia	No changes are needed, as Croatian CPA has the autorisation process for temporary derogations prescribed in Article 239.a. of the CPA.
Cyprus	See answer to Question 2(a).
Czech Republic	See answers to question 2(a). There is no special authorisation procedure and the application of the exceptions may be challenged only within standard legal remedies (as e. g. appeal), there is no special legal remedy.
Estonia	No changes need to be made -- our law does not provide for any derogations.
Finland	Head of investigation makes the decision. No possibility to appeal lies. The other possibility – which isn't really derogation from the general rule – is when the head of investigation deems the counsel incompetent. This decision can be appealed to a district court.
France	During the first 24 hours of deprivation of liberty, only the prosecutor has jurisdiction to determine whether or not a derogation should apply. As stated in Moulin case before ECHR (Moulin vs France, 23 novembre 2010, n° 37104/06), Prosecutor as a party can not intervene as an impartial judge concerning the liberty of the prosecuted one.
Germany	
Greece	The same applies as above.
Hungary	See above.
Ireland	The authorisation process is opaque and is entirely a decision made by the police authorities themselves and without outside supervision or judicial review. That being said there is no impediment at any time and for any reason for a person in custody applying to the High Court for protection pursuant to article 40 (4) of the Constitution. A copy the relevant article is annexed. These applications, referred to for convenience reasons as habeas corpus but in fact somewhat different are routinely made in circumstances where the conditions of a person's detention are viewed as being unfair or oppressive.
Italy	The authority competent for the derogation is the Judge issuing the warrant and the derogation must be explicit in text
Latvia	No changes needed, there are no circumstances in which temporary derogations are granted.
Lithuania	The derogation from the lawyer cannot be granted under Lithuanian law.
Luxembourg	Temporary derogations may be used only under special indication of reasons and motivation, which have to be given by writing.
Malta	Not regulated at law, desirable
Poland	On the grounds of provisions of the Articles 73 and 317 CCP the subject of authority entitled to make derogations is a public prosecutor. In turn, on the grounds of the Article 245 CCP and the Article 46 CPPO the subject of authority entitled to make derogations is determined as 'a detaining authority'. Above all such authority is represented by police officials. Decisions concerning the application of derogations aren't submitted to judicial review. However, decisions on derogations – according to contents of the Articles 73 § 2 and § 3, 245 § 1 and 317 § 2 CCP - shall be duly reasoned and attached to files of the proceedings. Interpretation process of the Article 46 § 4 CPPO leads us to conviction that in case of the decision on derogation there is not necessary to give duly reasons of such decision. Required amendments of the Polish law shall respond to the European Union standard which is

	indicated by provisions of the EU directive 2013/48. It's necessary to determine in the Polish law that the examination without the presence of a lawyer demands the decision of a public prosecutor which could be challenged by a suspect to the court. It seems necessary to regulate what are the consequences of making by the court a decision that the suspect's right of the access to a lawyer was limited in an unjust way (so it was breached). Especially it's necessary to regulate the issue of prohibition of using in criminal proceedings – as the evidence – explanations and statements of a suspect in case he or she was examined in absence of his or her lawyer as a result of unjust limitation of the right to a lawyer.
Portugal	No.
Romania	
Slovakia	Temporary derogation is assessed on a case-by-case basis. However, it is not a matter of decision. According to national practice, "unreachability" of the lawyer is established in the official record of the Proceeding by attaching an extract of telephone communication by the police or a prosecutor showing attempts to reach the lawyer by phone. The accused may file a complaint and thus submit the steps taken by the relevant authorities to the court.
Slovenia	n/a
Spain	There are no derogations.
Sweden	A decision to refuse access to lawyer during interrogation is generally taken by the prosecutor. A decision shall be documented and can be reviewed by a higher prosecutor. There is no provision ensuring reasoning of the decision. A decision to refuse a meeting in private with the private defence counsel is generally taken by a prosecutor. There are no provisions ensuring reasoning or documentation of the decision. A decision can be reviewed by court. Decisions on limiting communication or correspondence with reference to a risk of impeding the investigation, are taken by the prosecutor. The decision shall be documented and reasoned. A decision can be reviewed by court.
The Netherlands	An exceptional derogation may only be taken by the prosecutor according to article 50 of the NCCP. Temporary derogations may be used only under special indication of reasons and motivation, be limited in time and which have to be given by writing. A decision must immediately be reviewed by the investigating judge. Since there is a provision ensuring reasoning of the decision no changes need to be made in the Netherlands regarding this matter (article 8 sub 2 Directive).

Question 3. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to confidentiality regarding:*** *(a) the right to confidentiality itself?*	
Austria	In principle, the communication with the lawyer is confidential. However, the communication may be supervised under certain conditions (§ 59(2) StPO): - If the suspect is deprived of liberty also because of "danger of collusion" - The prosecutor has to order the supervision in writing and with reasons. - The supervision must be open. - It is limited to a period of two months. Even though there is the possibility to take remedies ex post (§ 106 StPO), the supervision is a threat to effective defence. From a defence point of view, the possibility of supervision makes it impossible to devise a defence strategy and to discuss the case freely for a period of up to two months without effective and quick remedies against such a supervision.
Belgium	No changes needed, since any suspect, being deprived of his liberty or not, has the right for confidential meeting with a lawyer of his choice before his first questioning according both the Belgian law and the national practice. Besides, in all police station it is a specific room for the private meeting of the suspect deprived of liberty with the lawyer.
Bulgaria	The right to confidential communications between suspects or accused persons and their lawyer(s) is guaranteed by the Bulgarian Constitution. There are no restrictions whatsoever as to the duration or frequency of communications. Some judges and academicians in my country rightly note that, under CPC and the Bar Act, the right to meetings in private is formulated as a right of the counsel for the defence only and not as a right of the accused person. This formal flaw does not practically affect the effective exercise of the right to meetings in private. Nevertheless, in order to reinforce the significance of the right to confidential communications between suspects or accused persons and their lawyer(s), it is proposed to amend CPC by an explicit provision granting the accused persons with the right to meet their lawyer(s) in private. I fully share this proposal.
Croatia	No changes are needed, as Croatian CPA prescribes the confidentiality of communication between suspects or accused persons and their defence lawyer. The right of confidentiality of communication between the persons under detention and their defence lawyer is prescribed in Articles 75, 76 and 108 of Croatian CPA.
Cyprus	The right of confidentiality is adequately safeguarded under Article 12 of the Rights of Persons Arrested and Detained into Custody Law of 2005
Czech Republic	No changes. The suspects or accused persons may speak with the defence lawyer without a third person being present also when they are in custody or prison (see Section 33(1), 76(5)(6), 179b(2) CCP).
Estonia	Confidentiality is already provided by our Bar Association Act. However, our laws covering surveillance and wire-tapping do not expressly provide for a ban to intervene with client-attorney communications, and in practice it is not uncommon that such communications are intercepted (generally justified by stating that the authorities had proper authorizations to intercept the communications of the suspect, and interception of communication of this suspect with his/her attorney is inevitable for technical reasons). The government believes that a ban to use such interceptions as evidence in criminal proceedings is sufficient to guarantee right to confidentiality. This position is not satisfactory, because (i) the right to confidentiality is breached by the mere possibility of interception, let alone the actual fact of interception, regardless of whether this information is used as evidence or not, and (ii) despite the ban to use such information as evidence, the government in fact has tried to circumvent the ban, and use intercepted client-attorney communications as evidence in criminal proceedings. With this in mind, I believe the state must improve protection of the right to confidentiality.

Finland	Generally speaking the right to confidentially in criminal proceedings is quite good. Since the Directive only concerns criminal proceedings, no specific issues arise here.
France	No specific observations on this point.
Germany	
Greece	The confidentiality of communication is regulated.
Hungary	Such right is ensured.
Ireland	In principal communications between lawyers and clients are strictly confidential in Ireland and not subject to any eavesdropping measure by the State. However in point of fact it has emerged that there has for many years been the policy of recording all telephone conversations taking place between Garda Stations and members of the public. This came to light in controversial circumstances in early 2014. The controversy caused by the fact that these conversations were eavesdropped on, including potentially conversations between suspects and their lawyers caused such a political controversy that it led to the resignation of the Commissioner of An Garda Siochana, and subsequently the Minister for Justice. The Government have established a commission of enquiry under the chairmanship of Mr Justice Niall Fennelly to examine the issues that arise. One of the difficulties confronting the Fennelly Commission is that there are literally hundreds of thousands of hours of taped conversations to be reviewed. It is claimed that the practice has been discontinued. There is provision in national law for surveillance including wiretaps of phone conversations. It is claimed but defence lawyers are not convinced that this does not arise in relation to lawyer/ client conversations. There is nothing in the legislation, copy annexed, which immunises lawyers from eavesdropping. There is clearly controversy between the guarantee of confidentiality in Article 4 and the references in Recitals 33 and 34. This controversy which is currently being ventilated before the Courts in the Netherlands and potentially before the Court of Justice of the European Union will be a source of difficulty in Ireland as in other jurisdictions.
Italy	No
Latvia	No changes needed, confidentiality is granted.
Lithuania	According to the Lithuanian law the lawyer has a right to communicate in private with the suspect or the accused that is under the arrest. In practise, confidentiality covers meetings, correspondence, telephone conversations and other forms of communication between the lawyer and the suspect or accused.
Luxembourg	The right to confidentiality is guaranteed at any stage of procedure. A confidential conversation is possible at the police station between the lawyer and the person under proceedings as well as before the first hearing at the office of the investigation judge. Usually this conversation lasts about 10 until 20 minutes but could be longer. At later stages of the proceedings, confidentiality is also guaranteed. A problem concerning the confidentiality could raise in case of linguistic problems between lawyer and person under proceedings, because the translator present at this confidential interview will also have to translate the declarations made by the person at the police station or at the hearing at the judge office. This is a delicate situation
Malta	Covered by legal privilege, adequately catered for
Poland	In Poland, a detainee, a potentially suspected person or a suspect as well as an accused person have the right to confidentiality in contacts with a lawyer. It's a principle which is affirmed by the constitutional

	standard (see the Article 42 section 2 in relation with the Article 31 section 3 of the Polish Constitution of the 2nd of April, 1997 – Journal of Laws of the 16th of July, 1997, No. 78, item 483 with subsequent amendments; see also the judgment of Polish Constitutional Tribunal of 11th of December 2012, K 37/2011, OTK-A 2012, No. 11, item 133). However there exist some exceptions from this principle which have been presented above (see the Articles: 73 §§ 1 - 3 CCP, 245 § 1 CCP and 46 § 4 CPPO). (This principle isn't absolute - also if we take into account the EU standard in this matter). There is no need to change the general rule of free contacts (communication) between lawyers and their clients (the above mentioned figures of proceedings). It should be noted that the possible limitations of the principle of confidentiality in the field of contacts between lawyers and their clients (so the exceptions from the principle of confidentiality on the ground of reservations indicated in the Article 72 § 2 and § 3 CCP, the Article 245 § 1 CCP and the Article 46 § 4 CPPO) shall regard requirement which is provided for in the Article 8 (2) of the EU directive 2013/48. So, the decision of a competent authorities (a public prosecutor or a police official) concerning their presence during the communication between a lawyer and his or her client (a detainee/a potentially suspected person/a suspect) as well as a public prosecutor's decision concerning the supervision of correspondence shall be challenged – by the entitled person – to the court. In the light of this remark it must be noted that both regulations of the Code of Criminal Proceedings (i.e. the Articles 72 and 245) and the regulation of the Code of Proceedings on Petty Offences (i.e. the Article 46) shall be properly amended.
Portugal	Confidentiality is granted in all cases so there is no need to change the proceedings in Portugal either in law or national practice.
Romania	
Slovakia	There are no limitations of free contact between the suspect and the counsel, including telephone calls, correspondence. Police and prosecutor cannot be present during meetings of the suspect with his counsel. The lawyer´s duty of confidentiality is recognised entirely and without exceptions in the course of criminal proceeding when it concerns a lawyer as a defence counsel and it applies to confidential information received from the defendant and about the defendant while the defence counsel represents his client. It is reflected in legal rules governing the following areas: personal communication and contact with the defendant without the presence of any third parties, protection of confidentiality of information sent in a written form or in any other form, the monitoring, tracking and recording of meetings between defence counsels and defendants. If law enforcement bodies or courts do not respect these provisions, information obtained in this way cannot be used as evidence since it was received in breach of law.
Slovenia	No changes are needed. Confidentiality is granted.
Spain	Confidentiality is granted in theory. In practise, there are some situations where confidentiality is at risk, namely, in fishing expeditions (indiscriminate searches) in lawyers' offices in relation with money laundering or tax crimes. Is not unusual that the authorities who conduct the search take dozens of files, regardless of whether the client is related to the crime or not. Even if the client is suspect, taking of evidence against him/her from the lawyers file is a breach of confidentiality.
Sweden	Existing legislation contains provisions ensuring the right to confidentiality itself.
The Netherlands	There are no changes necessary in national law. Existing legislation contains provisions ensuring the right to confidentiality itself (article 50 sub 1 NCCP). A confidential conversation is possible at the police station between the lawyer and the person under proceedings as well as before the first hearing at the office of the investigation judge. In all police station it is a specific room for the private meeting of the suspect deprived of liberty with the lawyer.

(b)	*the communications covered by confidentiality?*
Austria	None
Belgium	No changes needed, since all communications between the suspect, being deprived of his liberty or not, and his/her lawyer are covered by confidentiality. The Belgian lawyers are besides held by professional secrecy under criminal penalty in case of breach of this secrecy (see article 458 of the Belgian Criminal Code). The only change could be perhaps a longer delay of this confidential previous meeting with the lawyer, because the Belgian law limits it to 30 minutes in case of a suspect deprived of liberty. It could be 1 hour. The Belgian Constitutional Court decides in that respect that this delay of 30 minutes was not mandatory and could this be extended according the necessities, for instance when the suspect deprived of liberty does not speak the language of the lawyer and needs a translator (C.const., 14 Feb. 2013).
Bulgaria	All types of communications between accused persons and their lawyer(s) are covered by confidentiality under Bulgarian law.
Croatia	No changes needed, see the previous answer.
Cyprus	The confidentiality of the communications between the arrested person and his/her lawyer is adequately safeguarded under Article 12 of the Rights of Persons Arrested and Detained into Custody Law of 2005. The only exception to the confidentiality of communication between suspects or accused persons and their lawyer is Article 15 of the Rights of Persons Arrested and Detained into Custody Law of 2005 which provides that every detainee has the right to send and receive letters of correspondence to and from his/her lawyer without them being opened or read by any member of the Police or prison personnel except only in exceptional circumstances in which the person in charge of the detention centre has reason to believe that the envelope contains an illicit object and in that case the envelope is opened by a member of the Police or prison personnel in the presence of the detainee.
Czech Republic	See the previous answer.
Estonia	No changes need to be made -- all communications are covered by confidentiality.
Finland	See previous answer.
France	No specific observations on this point.
Germany	
Greece	The communication in detention centres and prisons mostly includes telephone conversations (when glazed for security reasons). It would better if, at least the communication, was held in a better place and in a manner not raising issues of confidentiality violation.
Hungary	Such right is ensured.
Ireland	In principle all communications whether written or oral are covered by confidentiality.
Italy	Oral and written communications. If the accused is detained in prison, on the envelope of the communications coming from the lawyer, the defence counsel, in order to avoid the breach of confidentiality, must write that the communication is related to the defence in a criminal proceeding pointing out the number of the file, put his signature certified by the Bar Council.
Latvia	No changes needed, all communications are covered by confidentiality.
Lithuania	All the communications between the lawyer and the suspect or the accused are covered by confidentiality.
Luxembourg	Conversations at the police station Conversations at the investigation judge office Later conversations during the proceedings (i.e. preparation of defence in prison, individual boxes are at disposal for such purpose)
Malta	Covered by legal privilege, adequately catered for

Poland	According to the Article 245 § 1 CCP, a detainee shall have ensured – on his or her demand – a contact (in an available form) with a lawyer (an advocate or a legal advisor). In practice, 'an available form of a contact with a lawyer' means each manner of communication possible in the venue where a detainee is placed, i.e. the contact by phone, fax, e-mail or by a traditional letter which should be delivered to a lawyer by a detaining authority or other institution or person. A detainee shall have also ensured a direct (personal) conversation with a lawyer. According to the rule of the Article 73 § 1 CCP a suspect/an accused temporarily arrested may communicate with his or her defence lawyer in the absence of other persons or by correspondence. So it means that a suspect/an accused temporarily arrested is principally entitled to direct, personal contacts with his or her defence lawyer. Considering the regulation of the Article 73 § 1 CCP it seems that such contacts could be not only personal but they're also possible by using other means of distant communication, especially a phone. However the contents of the Article 217c of the Polish Executive Criminal Code of 1997 and its interpretation could bring us to the conclusion that a temporarily arrested person is entitled to use in his or her contacts just a phone and no other means of wire or wireless communication. But in the light of existing opinions, the Article 73 § 1 CCP is a specific regulation (lex specialis) for the regulation of the Article 217c ECC. From the practical point of view, contacts with a defence lawyer by correspondence includes contacts by traditional mails but also by e-mails (limitations in this field can be rather a result of the lack of accessibility to computer devices and to Internet for a temporarily arrested person). According to the Article 46 § 4 CPPO a detainee in proceedings on a petty offence shall have ensured – on his or her demand – a contact (in an available form) with a lawyer (an advocate or a legal advisor). In practice, 'an available form of a contact with a lawyer' means each manner of communication possible in the venue where a detainee is placed, i.e. the contact by phone, fax, e-mail or by a traditional letter which should be delivered to a lawyer by a detaining authority or other institution or person. It should be added that in the light of the Article 46 § 4 CPPO a detainee in proceedings on a petty offence shall have also ensured a direct (personal) conversation with a lawyer. All these forms of communication are covered (principally) by confidentiality. (However the principle of confidentiality has its exceptions which emerge from reservations of entitled authorities letting them to limit the right to free communication in a certain way).
Portugal	None.
Romania	
Slovakia	If the accused is apprehended, remanded in custody or serves an imprisonment sentence, he may speak with his counsel in the absence of a third person but this shall not apply to a telephone call of the accused with his counsel during serving custody. The conditions and mode whereof are set forth by Regulation No. 368/2008 of the Ministry of Justice of the Slovak Republic on the Procedure related to the execution of the imprison sentence and Act No. 221/2006 on the execution of the prison sentence
Slovenia	n/a
Spain	Every communication is covered, with an exception: communications in prison in relation to terrorism. This measure has to be ordered by a judge.
Sweden	When a public defence counsel is appointed, the right to confidentiality is unrestricted. When a private defence counsel is appointed, limitations may apply concerning electronic communication and correspondence. Communication may be tapped. In case of tapping, the suspect and the private defence counsel shall be informed in advance. Correspondence may, in exceptional situations due to security reasons, be examined. An examination may only be carried out if it has been admitted by the suspect. Legislative amendments have been proposed stipulating an unrestricted right to confidentiality when the private defence counsel is an advocate.
The Netherlands	No changes need to be made - all communications (theoretically) are covered by confidentiality (article 50 sub 1 NCCP).

Question 4. ***Do you have experience in your Member State – covering either national law or national practice or both - of exceptions to confidentiality in criminal proceedings in accordance with Recital 34?***	
Austria	No experience.
Belgium	No, never experimented any exceptions to confidentiality nor heard about any case of exception to confidentiality.
Bulgaria	No, I am not aware of such exceptions.
Croatia	Under Articles 75/2 and 76/2 of the Croatian CPA, there are prescribed exceptions of the right of confidentiality of communication between the persons under detention and their defence lawyer if there is a danger that the communication between the above mentioned persons could help accused person to compound a crime, or that he will help the offender or felon, or if there is a danger that the person under detention could finish the crime. It is prescribed only for the very serious crimes (i.e. genocide, terrorism, murder, drug related crimes etc.)
Cyprus	Currently there are no exceptions to confidentiality in criminal proceedings in accordance with Recital 34.
Czech Republic	No.
Estonia	I do not have experience of Recital 34 exceptions. However, our regulations certainly do not preclude such possibility.
Finland	No experience.
France	
Germany	
Greece	Under Article 253A of the Greek Code of Criminal Procedures there are exceptions to confidentiality solely in order for very serious crimes to be detected (criminal organizations, terrorism, etc.). All operations must be decided by the Judicial Council, which fully justifies these actions and defines and the period of application of the exception. All these operations are supervised effectively by the competent Investigator and Prosecutor.
Hungary	No.
Ireland	As adverted to in reply to 3A, conversations between lawyers and clients have been eavesdropped. Solicitors have not in relation to police stations been advised as to whether their individual conversations have been listened to. This is being addressed by the Fennelly Commission. Prison phone calls were also recorded and solicitors whose calls were recorded have been advised by the Inspector of Prisons of this fact. The report in respect of this matter is pending and a further reply will issue in due course.
Italy	
Latvia	Yes, but information gathered this way is unusable as evidence.
Lithuania	There are no exceptions of the rule of confidentiality between the lawyer and the client in the Lithuanian law. Even if the information that is useful for the accusation of a person is being sought out of such communication (i.e. communication between the lawyer and the client) it can't be used in criminal proceedings.
Luxembourg	No
Malta	No personal experience
Poland	No, I haven't such experience. However the issue of surveillance of lawyers by competent authorities (national intelligence services) exists in Poland, also as the law-maker's field of interests and legislative activity, and it's widely discussed especially in mass media (Cf. e.g. E. Usowicz, Służby specjalne podsłuchują adwokatów, 'Rzeczpospolita', the 21st of July, 2015, http://www4.rp.pl/Opinie/307219956-Sluzby-specjalne-podsluchuja-adwokatow.html).
Portugal	Not to this moment.

Romania	
Slovakia	In general, if in the course of lawful surveillance operation the accused is found to be in communication with his defence counsel, no information thus obtained may be used for the purposes of criminal proceedings, and any such information must be forthwith destroyed in a prescribed manner; this shall not apply to information relating to a case in which a lawyer does not represent the accused as his defence counsel As laid down in Act No. 46/1993 on the Slovak Intelligence Agency, the Slovak Intelligence Agency may seek the disclosure of personal data from public information systems even without the consent of the data subject. State authorities are obliged to assist the Slovak Intelligence Agency in this respect, and provide it will all necessary information and documents. If the Slovak Intelligence Agency makes any record as a result of monitoring the area accessible to the public, this record may be used as evidence in criminal proceedings. Apart from the above, police investigation officer, prosecutor and court cannot use any information obtained by the Slovak Intelligence Agency as an evidence in criminal proceedings. This fully applies to the relationship between a lawyer and a client if their contact is not made in a public place.
Slovenia	I am not aware of any such exception under the Slovene law.
Spain	Yes. In 2012, the Supreme Tribunal sentence famous judge Baltasar Garzon for tapping conversations between the suspect and his lawyer in prison.
Sweden	Communication between the suspect and his or her lawyer may not be subject to secret surveillance (i e wiretapping and/or bugging). In 2012, a review was carried out on how the legislation was applied with (Säkerhets- och Integritetsskyddsnämnden Dnr 114-2011). In this connection the Swedish Bar emphasized that there is no insight into a case of tapping and that the lawyer is almost never informed of in which situations a conversation has been bugged/tapped or the measures taken in connection to this. The review pointed out that there was a lack of general routines within the police authorities ensuring a coherent practice in accordance with the legislation.
The Netherlands	Based on paragraph 3.3.2 of the Intelligence and Security Services Act 2002 the Dutch intelligence service (AIVD) have so-called special powers, also known as “special intelligence resources”. They may be used only when strictly necessary for the service to carry out the duties it has been entrusted with by law. And they cannot be used at all for two of those tasks: security screenings and safeguarding vital sectors. Moreover, no action likely to seriously infringe personal privacy may be taken without the express prior permission of the Minister of the Interior. However according to the AIVD these powers also under circumstances stretches out to the relationship between a lawyer and a client. In April 2014 a lawfirm whom had been wiretapped filed an complaint on behalf of Prakken d'Olivieira Lawyers, against the wiretapping of lawyers associated with the firm, by the Dutch Intelligence Service (AIVD). The court action was set against both the Minister of the Interior and the Minister of Defence (AIVD being a part of that), in order to introduce a prior judicial authorisation for each surveillance procedure involving lawyers. The court of appeal ruled in October 2015 the Dutch government to stop within six months all interception of communications between clients and their lawyers under the current regime. The Dutch State was given six months to adjust the policy of its security agencies regarding the surveillance of lawyers and to ensure that an independent body will exercise effective prior control. The court also ruled that information obtained from surveillance of lawyers may only be released to the public prosecutor if an independent body has examined if, and under what conditions, security agencies were allowed to conduct surveillance. The Court held that the current safeguards were inadequate in view of the case law of the European Court of Human Rights.

Question 5. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to the waiver of the right of access to a lawyer regarding:*** *(a) the provision of information regarding the right and its waiver?*	
Austria	None
Belgium	No changes, since the information about the possibility to waive the right to access to a lawyer is duly given and the waiver, if any given by the suspect, must be recorded in writing in the statement of interrogation ("procès-verbal de l'audition").
Bulgaria	There is only one simple rule in Bulgarian law concerning the waiver of the right to a lawyer. This is Article 96(1) of CPC, which states: "The accused person may refuse to have a counsel for the defence at any time of proceedings". This is obviously insufficient form the viewpoint of the standards of the Directive, which means that practically all the requirements of Article 9 of the Directive are to be transposed into Bulgarian criminal procedural law.
Croatia	There are no changes needed, as it is prescribed under Articles 239. and 273. of the Croatian CPA. It is important to note that Croatian CPA prescribes when suspects and accused persons must have the defence lawyer, and in that case cannot waive its right to a defence lawyer. If suspect or accused person waives its right to a defence lawyer it needs to be explicit.
Cyprus	Currently there is no provision that requires from the Police to inform the accused of the implications of waiving his rights. Nevertheless Article 11 of the Rights of Persons Arrested and Detained into Custody Law of 2005 provides that if the accused decides to waive his rights this must be done in writing and the accused has to co-sign the waiver of rights along with the investigating officer. If the accused refuses to co-sign the waiver the investigating officer must report the refusal of the accused in the investigation file. Also the reasons of the waiver must be also reported in the investigation file. The current legislation must be amended so that to include a provision that the suspect or accused person has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the possible consequences of waiving the said right.
Czech Republic	The current domestic legislation in principle complies with the Directive´s conditions, the wording could only be made more precise. The waiver is regulated in Section 36b CCP and applies only in specified cases of mandatory defence (generally when the term of imprisonment at stake is higher than 5 years and during the simplified proceedings), when at the same time the exceptional sentence cannot be imposed. The waiver can be made only through an explicit written declaration or orally into the record at the law enforcement authority which carries out the proceedings. Such declaration must be made during the presence of the defence lawyer after prior consultation with him. The waiver may be taken back any time but the accused cannot then waive the defence lawyer again.
Estonia	Currently, there is no provision in our Code of Criminal Procedure (CCP) on providing information to the suspect/accused on the right concerned and the consequences of waiving it. In practice, waivers are common during pre-trial investigation proceedings, and in majority of cases, no proper information is given to suspects about their need for a lawyer nor the consequences of waiving this right. It is not uncommon to hear cases were suspects have been effectively induced by the police to waive, hinting delays in proceedings, costs, ineffectiveness of lawyers, etc. Both law and practice must change. Ideally, waivers should be acceptable only when given after consultation with the lawyer. It is unlikely, however, that our government would be ready to adopt such measure.
Finland	In accordance with the letter of rights (or the more narrow announcement when not deprived of liberty), the suspects are given the information about their right to a lawyer. However, especially vulnerable persons but also others, may not fully understand the meaning of being assisted by a lawyer. A interrogation statement nowadays after Supreme Court Precedent KKO 2012:45 in practice always

	begins with a long section, of which one part states that “having a counsel present may help my defence etc., I fully understand that I’m waiving this right voluntarily and unequivocally…”. We are concerned that people in general, especially if not having been interrogated by the police previously, do not understand what they’re waving. It has also been reported that in a recent case, even when an application for a public defender already was pending, the suspect had “waived” his right to a lawyer – and thereafter confessed without the lawyer being present. But technically speaking such information is given to suspects, there’s just no way of controlling under which circumstances etc., since only a fraction of the interrogations are (video)taped.
France	As long as the assistance of a lawyer is a right that has to be claimed to be provided, unless before the Cour d’assises where its presence is mandatory, no specific provisions are made to prevent from a “guided” waiving of the right to a lawyer especially during the police interrogation.
Germany	
Greece	A waiver is granted solely in misdemeanors. The defendant has to be informed in writing in the language he understands about the right, the waiver, and the revocation of the waiver.
Hungary	No.
Ireland	See the guidance issued by the Garda authorities to their own members. While this advocates best practice there is a concern among defence practitioners at the extent of the instances of police advising suspects you are entitled to have a solicitor present during questioning but it will take several hours to put that in place and by implication the person's detention will be extended solely on that account. It would be preferable if there was a strict rule requiring the importance to the person of having a solicitor present being outlined to them, and audio-visually recorded so that any waiver was clearly recorded.
Italy	There is no provision about waiver of the rights.
Latvia	No changes needed, person is informed about the right to a lawyer and also about the right to waiver it.
Lithuania	According to the Lithuanian law the notification about the suspect’s rights, including the right to the lawyer, is being handed to the suspect in written form. However, the suspect is not provided in written form with the information about the waiver of this right and the possibilities to revoke the waiver. In practise, no suspect is being informed about the consequences related to the waiver of the right of access to a lawyer. To my opinion, the requirement to inform the suspect in written form about the waiver of the right of access a lawyer and the right to revoke a waiver should be envisioned in national law. According to Lithuanian law the suspect can ask for the lawyer or can call the lawyer himself/herself at any stage of the proceedings regardless of the waiver of the right of access to a lawyer. To my opinion, such notification should be handed to the suspect as well and an obligation to do this should be envisioned in national law.
Luxembourg	Article 39 of criminal procedure code stipulates that « (7) Avant de procéder à l'interrogation, les officiers de police judiciaire et les agents de police judiciaire désignés à l'article 13 donnent avis à la personne interrogée, par écrit et contre récépissé dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de se faire assister par un conseil parmi les avocats et avocats à la cour du tableau des avocats. (8) Les procès-verbaux d'audition de la personne retenue indiquent le jour et l'heure à laquelle la personne retenue a été informée des droits lui conférés par les paragraphes (3), (6) et (7) du présent article, ainsi que, le cas échéant, les raisons qui ont motivé un refus ou un retard dans l'application du droit conféré au paragraphe (3); la durée des interrogatoires auxquels elle a été soumise et des repos qui ont séparé ces interrogatoires; le jour et l'heure à partir desquels elle a été retenue, ainsi que le jour et l'heure à partir desquels elle a été, soit libérée, » Practise to be improved

	First of all this “bill of rights” should be given in presence of a lawyer which would offer a supplementary guarantee for both parties, pursuant authorities and pursued person, even though the person later on will waive his right to legal assistance. Secondly this written bill of rights is not given really and affectively in due time to the person put in procedure, only in the PV of first audition by the police or in the transcription of the first interrogation by the instruction judge references concerning the information of rights are made in writing. This means that the person is not really in possession of a bill of rights, that he could consult at his good will and at any time, he wants during the pre-trial procedure. In addition, there is no guarantee that the person understood the rights he was only orally notified at the time and in the conditions these right were notified to him. In the eyes of the undersigned, this practise is absolutely contrary to the requirements of the directive, and to the requirements of the actual national law as stipulated in article 39 requesting a notification by writing. The practise has so to be changed very rapidly whereas the national legal dispositions are in harmony with the requirements of the directive concerning the assistance of a legal counsel.
Malta	Provided by the judiciary, deemed adequate
Poland	In Polish proceedings in criminal cases and in petty offences cases there are provisions containing the information regarding the right of access to a lawyer. However, these provisions don’t include any information regarding the possibility to waive the mentioned right. It must be noted that neither the Code of Criminal Proceedings nor the Code of Proceedings on Petty Offences provide for the requirement to declare expressively by a party that he or she wants to waive his or her rights. In fact the waiver of a certain right is simply unequivocal with non-performing of such right. It’s a signal that the right and its scope haven’t been interested the party. But the necessary condition of such passive behavior of the party (i.e. his or her non-performance of the right) is that the party shall have the knowledge about the set of his or her rights. This means that the party ought to be informed (instructed) about his or her rights. Appropriate interpretation of passive behavior of a party as well as the fact that such party really doesn’t want to perform the right of access to a lawyer is dependent upon the effectiveness of instructing (informing) a party about his or her rights in proceedings. If a party is aware of his or her rights (in consequence of a proper instruction) and the authority is sure that the instruction is well understood by a party, it will be able to be accepted that non-performance of the right by a party is his or her conscious decision. It seems that the procedure of effective and repeatable informing about rights of a detainee/a potentially suspected person/a suspect/an accused person (also about the right of access to a lawyer) during the whole proceedings (at its various stages) would be sufficient to reach the required EU standard. Information on rights shall be delivered in simple, clear, communicative language (and they are, if we take into consideration model letters of rights existing in the Polish law). Of course, introduction of the regulation containing clearly expressed possibility to waive the right of access to a lawyer to the Polish law is also probable but such regulation wouldn’t be fitting well to the traditional manner of creating provisions concerning rights in Polish law on proceedings in criminal cases and in petty offences cases. By the way it even seems that if the prospective regulation or regulations will be referring to a certain declaration of a detainee/a potentially suspected person/a suspect/an accused person on non-performing the right of access to a lawyer, it shall be the declaration on non-performance of the right in reference to selected, particular proceedings activities.
Portugal	There is information about the right of access to a lawyer. But there is no information about the possible consequences to the waiver.
Romania	
Slovakia	Slovak legislation does not explicitly regulate general waiver of the right of access to a lawyer. Access to a lawyer/counsel is a right, not an obligation (except for the mandatory defence examples). The suspect or accused is provided with the possibility to choose a lawyer or to have a lawyer assigned or decide for self-defence. No information is given on the possible consequences of the absence of a lawyer. On the other hand, the law enforcement bodies are obligated to explain in more detail the instructions on the rights of the accused should he so required, including the right of access to a lawyer.

	As regards mandatory counsel, according to Sec 37 para 4 CCP, if it is the case of proceeding on particularly serious felony, the accused may by explicit declaration waive his right to a lawyer after the first consultation with the lawyer. He may revoke the waiver.
Slovenia	No changes are needed. The waiver should be given voluntarily and unequivocally and is subject to challange.
Spain	The suspect or accused only can waive his/her right in offences related to vehicle traffic, after he/she received clear information about it, but the law does not provide that this information has to be given by a lawyer, which is a default in the system, because, instead of a lawyer, the one who give that information is the police officer or the clerk of the Court. It is possible to revoke the waiver at any time.
Sweden	There is no express provision, covering the requirements referred to in Article 9. Yet, as the Article corresponds to the case-law of ECtHR, the requirements shall already be taken into consideration in Swedish practice. In order to ensure a coherent practice, amendments in correspondence with Article 9 would be preferred. Regardless way of implementation, it is important that proper training continuously is provided, ensuring that the handling of a waiver is carried out in compliance with the requirements of the Directive. Regarding juvenile suspects, new guidelines to be issued by the Prosecutor General states that a waiver from a minor may never be decisive. The prosecutor shall in principle always submit an application for a public defender for the minor.
The Netherlands	Currently, there is no provision in the Dutch Criminal Proceedings Act on providing information to the suspect/accused on the right concerned and the consequences of waiving it. In practice, waivers are common during pre-trial investigation proceedings, and in majority of cases, no proper information is given to suspects about their need for a lawyer nor the consequences of waiving this right. For that matter our national law does not meet the requirements of article 9. 1 sub a of the Directive.

(b)	*evidence regarding the voluntary and unequivocal nature of a waiver?*
Austria	None
Belgium	No changes, since any waiver of the right of access to a lawyer requires that the suspect is an adult (above 18) and signs expressively a written waiver (translated to him in case he would not understand the language of the proceeding).
Bulgaria	Please see the answer to Question 5 (a).
Croatia	No changes are needed, as it is prescribed in Article 273/2 of CPA.
Cyprus	This is adequately covered by Article 11 of the Rights of Persons Arrested and Detained into Custody Law of 2005 (see answer to Question 5 (a) above)
Czech Republic	See the previous answer.
Estonia	Currently, the only rule is that waiver must be in writing. This is hardly sufficient evidence regarding the voluntary and unequivocal nature of a waiver. Both law and practice need to improve on this matter. One solution could be a requirement to have audio or audiovisual recording of the provision of information about the waiver, and the suspect's statement that he/she wishes to exercise the waiver.
Finland	See answer above. There is in 99,9 % of the cases only the interrogation protocol, which the suspect signs, and this in the vast majority of the cases is deemed to be enough. We would absolutely like to see a more transparent and controllable way of checking what has been talked about before the suspect signs that he “voluntarily” waives his right to a lawyer. There are several cases reported in which the suspect claims that if he wants a lawyer, he will be at the police station for a long time, since no lawyer will soon be available etc.
France	No specific observations.
Germany	
Greece	Solely in misdemeanors. Everything has to be done in the language the defendant understands, who shall then sign below the relevant statement in this language.
Hungary	Any waiver is recorded and later the suspect/accused may decide to ask for a lawyer. We do not have statistical information on cases when waiver is made on a hearing where no lawyer is present.
Ireland	See reply to (a) above.
Italy	
Latvia	No changes needed, the waiver is confirmed with a signature.
Lithuania	As the law does not foresee the obligation to make records of questioning, there can’t be any unprejudiced evidence that a waiver has been voluntary and unequivocal. In practise, the suspect has to sign a waiver and this document is being attached to the case file.
Luxembourg	Proposition There should be a written waiver signed by the renouncing person and this in presence of a lawyer, who would just assist during this procedure after once more having explained the procedural rights to the person under procedure. Such a practice would make sure that there would rise no more litigation concerning this point.
Malta	Minuted in court proceedings
Poland	The issue of waiver the right of access to a lawyer isn’t regulated in the Polish Code of Criminal Proceedings as well as in the Code of Proceedings on Petty Offences. The evidence regarding the voluntary and unequivocal nature of waiver isn’t indicated in any provision. However, according to current legal solutions a voluntary and unequivocal nature of waiver (which is, in fact, not declared in clear words of a person) could be the result of the interpretation of the intent of a person who is aware of his or her rights. Information on rights (letters of rights) are delivered to persons involved in criminal proceedings or in proceedings on petty offences and they are prepared in communicative language. So, if a person understands his or her right and its scope (its contents), he or she will be treated as conscious one. If such a person doesn’t perform his or her rights, it will be acknowledged that he or she ‘waived’ his or her right. If the feature regulation or regulations will be referring to a certain declaration of a conscious, well informed (instructed) about the rights detainee/potentially suspected

	person/suspect/accused person, concerning the non-performance of the right of access to a lawyer, such declaration would be a sufficient evidence in the discussed field of the considered issue.
Portugal	There must be a written statement from the accused saying that he doesn't want to be assisted by a lawyer in a language that he can understand.
Romania	
Slovakia	No provisions.
Slovenia	No changes are needed.
Spain	See answer below.
Sweden	To my knowledge, there are no specific routines regarding this. It is the official who receives the waiver that has ascertain that it is given voluntarily and unequivocally.
The Netherlands	In practice, the fact that a suspect has waived his or her right of access to a lawyer is recorded in the official transcript of the police interview (proces-verbaal van verhoor). Establishing that the suspect has waived this right is therefore in most cases not the problem. What could pose problems in practice is under which circumstances the suspect waived this right and what information has been given to the suspect in this regard (in addition to the information in the letter of rights). This is, in most cases, not recorded in the official transcript of the police interview. In other words: in practice it can be difficult to assess whether the waiver was voluntary, well informed and unequivocal.

(c)	*the record keeping of waivers?*
Austria	None
Belgium	No changes, since any waiver of the right of access to a lawyer is indeed registered in writing.
Bulgaria	Please see the answer to Question 5 (a).
Croatia	No changes are needed, as it is prescribed in Article 275 of CPA.
Cyprus	This is adequately covered by Article 11 of the Rights of Persons Arrested and Detained into Custody Law of 2005 (see answer to Question 5 (a) above)
Czech Republic	See the previous answer.
Estonia	See answer to (b) above.
Finland	See answer above.
France	The waiving must be written and recorded.
Germany	
Greece	In misdemeanors, the waiver is currently recorded, but in the Greek language. So, it is not so clear whether the foreign defendant has complete knowledge of the waiver.
Hungary	Waivers are always recorded.
Ireland	See reply to (a) above. It would also be helpful if it was an obligation on the member in charge of the prisoner's custody to record the giving of advice in relation to a solicitor being present as part of the information required to be recorded in writing on the custody record and signed by the prisoner.
Italy	
Latvia	No changes needed, the waiver is confirmed with a signature.
Lithuania	It is being attached to the case file.
Luxembourg	This would be a more modern practise but with the same aim as the proposition made under b by the undersigned.
Malta	Minuted in court proceedings
Poland	There are no obstacles to keep a declaration on waiver of the right of access to a lawyer in the records of the concrete proceedings if, of course, such declaration exists. If such declaration wasn't made orally in clear words (or it wasn't delivered to the authority in a written form), there are no explicit information in the files of the proceedings about non-performing of the discussed right by a person (in such case there is no proper reference in minutes as well as there is no document including the written declaration which could be attached to the files). Figures of proceedings - a detainee/a suspect/an accused – are informed about their rights and they receive written information on their rights (letters of rights). Such letters of rights don't inform about the possibility to waive the right but they give the awareness and knowledge about rights in proceedings. The mentioned figures sign a copy of such letters which is, thereafter, kept in files of proceedings in a proper case. In future, if the Polish law-maker decides to regulate the issue of waiver, the next possible change will be concern the contents of letters of rights. Such change could be made by adding to them a precise and explicit information on the possible waiver or non-performance of rights (even in reference to selected, particular activities in proceedings). The new document of the letter of rights, signed by an entitled person, would be attached to files of proceedings.
Malta	
Portugal	No information.
Romania	
Slovakia	It is officially recorded whether the suspect or accused decided for a counsel or not, waivers are recorded in the Minutes of the proceeding.
Slovenia	No changes are needed. The waiver, which can be made in writing or orally, shall be noted, as well as the circumstances under which the waiver was given, using the recording procedure.
Spain	By writting.

Sweden	A waiver shall be noted in the record of the preliminary investigation. If a waiver has been given during an interrogation it is noted in the transcription of the interrogation. If a waiver is given to court, it shall be noted using the existing record procedure.
The Netherlands	See answer above.

(d) the revocation of waivers?	
Austria	The suspect is not informed about the right to revoke the waiver to seek assistance of a lawyer, which must be changed.
Belgium	A change is required since no possibility to revoke the waiver is organised by the Belgian law although an immediate revocation of the waiver in the course of the questioning should be organized. The possibility of waiver is indeed submit to the suspect before the questioning, although it is precisely during the questioning and according the content of the questions that the suspect could feel the need for the assistance of a lawyer. The suspect would thus be in the position to revoke his/her waiver until he/she signed the final statement of his/her declarations.
Bulgaria	Please see the answer to Question 5 (a).
Croatia	No changes are needed, as it is prescribed in Article 274. of Croatian CPA.
Cyprus	This is adequately covered by Article 11 of the Rights of Persons Arrested and Detained into Custody Law of 2005. The accused can revoke his waiver at any time during his detention by the Police.
Czech Republic	See the previous answer.
Estonia	Our laws do not explicitly provide for the right to revoke a waiver, and therefore the suspects are also not informed about this right explicitly. In practice, a suspect is asked at every interview whether he/she wants to have a lawyer present or not, and therefore one can argue that the suspect actually can change his/her mind on the waiver at any time. Nevertheless, I believe that rules on revocation and information about this possibility are necessary to implement the Directive.
Finland	The revocation can be done at any time. However, statements made without a lawyer present are usually accepted as evidence, since there is a written record in the interrogation report that the suspect has waived his right voluntarily. Again, more transparency and control over the circumstances is needed by legislation.
France	It is always possible to waive the waiver.
Germany	
Greece	There is no information about this right, but in practice, if someone asks for a lawyer in a later stage, this possibility is granted.
Hungary	It is not a revocation of the waiver, but the suspect/accused may decide to ask for a lawyer at any time during the procedure.
Ireland	It would be desirable if each interview commenced with a reminder to the detained person of their entitlement to have a solicitor present and a requirement that the waiver be repeated if being insisted on.
Italy	
Latvia	No changes needed, the waiver can be revoked at any moment.
Lithuania	The person can revoke the waiver at any stage of criminal proceedings.
Luxembourg	Must be possible during all following procedural acts, without having retroactive effects, for the future only and no effect on procedural acts done after a valid waiver.
Malta	Possible, may produce lawyer at any stage
Poland	Polish law concerning proceedings in criminal cases or cases on petty offences doesn't provide for provisions on revocation of waivers (which is, by the way, a consequence of the lack of provisions referring to the waiver of the right of access to a lawyer). In practice a proper person who doesn't perform the right of access to a lawyer (he or she is not assisted by a lawyer at previous stages of the proceedings) is entitled to perform the mentioned right at next (later) stages of the proceedings. So the revocation of waiver is implied by the decision of informed, conscious person to perform the right of access to a lawyer (by seeking or asking for the assistance of a lawyer).
Portugal	None.
Romania	
Slovakia	The accused may require assistance of a lawyer at the later stage of the proceeding.
Slovenia	No changes are needed. The revocation is possible at any time and stage of proceedings.
Spain	It is possible at any time.
Sweden	A waiver can be revoked at any point of time during the criminal proceedings.

The Netherlands	

Question 6. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to the right to have a third person notified of the deprivation of liberty regarding:*** *(a) the time when this right is exercised (i.e. without undue delay);*	
Austria	None
Belgium	No substantial changes are needed since the existing Belgian law fulfils the requirements of the Directive (see article 2bis, §3 of the law of 20 July 1990 relating to temporarily detention) The existing provision of the Belgian law (i.e. article 2bis, §3 of the law of 20 July 1990) does not stipulate that the right to have a third person notified of the deprivation of liberty has to be exercised without undue delay. This should be added in the Belgian law, even if this can be deducted from the existing provision (because it states that the prosecutor or investigating magistrate may "postpone" such notification to a third party if there are serious reason to fear collusion).
Bulgaria	No changes need to be made in my country with respect to the right to have a third person notified of the deprivation of liberty. According to the opinion of some judges and academicians, which I fully share, the standards set forth in Bulgarian criminal procedural law *go beyond the minimum standards* as set forth by the Directive. In my view, the manner in which this right is guaranteed both by law and in practice *can be defined as an example of both good legislative approach and good practice* because of the following reasons: Regarding the time when this right is to be exercised, CPC stipulates that notification is to be made ***"promptly"*** and this obviously goes beyond the standard "without undue delay" in the meaning of Article 5 of the Directive. Moreover, in the meaning of Article 5 of the Directive, the right to have a third person notified of the deprivation of liberty fully depends on the will of the detainee. This is not so according to the respective Bulgarian procedural rule, which states that notification *of the family* of the accused person is *obligatory* for the competent authorities. As regards the employer, she/he may not be notified *only upon the explicit refusal* of the accused person to notify the employer. In my view, the higher standards set forth by Bulgarian procedural law should be preserved in the future process of transposing the requirements of the Directive into Bulgarian law and in this respect Bulgarian authorities could rely on the "non-regression clause" of Article 14 of the Directive.
Croatia	No changes are needed, as it is prescribed in Article 108/5. of Croatian CPA that the third person that the deprived person chooses will be notified without undue delay.
Cyprus	This is adequately covered by Article 3(2)(b) of the Rights of Persons Arrested and Detained into Custody Law of 2005 which provides that the arrested person has the right immediately after his arrest to communicate in person or by telephone with a relative or a third person of his choosing. In the case that the arrested person is under 18 he/she has the right to communicate with anyone of his parents or legal guardians to inform them of his arrest.
Czech Republic	No changes, section 70 CCP uses the term "without delay".
Estonia	No changes need to be made
Finland	On paper the system works quite well. In an Act covering the treatment of a detained person in police custody the person in custody has the right to be in contact with third persons, especially family members. However, if the person is suspected of a crime – which quite often is the case – the head of investigation may order restrictions to contacts to third persons by applying Coercive Measures Act, until the suspect either is released or a detention hearing is in court, after which the court decides on the restrictions. Restrictions are often applied, even though the provision in law states that restrictions between family members and consulates may be applied only when there are weighty reasons. Even the courts have a low threshold in applying "weighty reasons" in detention hearings; an announcement by the head of investigation usually suffices. Stricter rules on restrictions should be taken into law.

	If no restrictions are applied, the problems are fewer but not non-existent. Cases have reported in which no contact with family members have been allowed when the counsel meets the client perhaps for the first time at the detention hearing, due to whatever reason, even when no restrictions have been applied. We also wish to refer to the latest CPT report concerning Finland (http://www.cpt.coe.int/documents/fin/2015-25-inf-eng.pdf), in which CPT recommended the following: Regarding notification of custody, although many detained persons confirmed that they had been able to have their next-of-kin informed shortly after apprehension, the delegation noted that delays in such notification remained frequent and widespread, and could last up to several days, especially when the apprehended person was a foreign national without residence in Finland.
France	During custody, the right to inform is limited in a time schedule of 3 hours except in case of insurmountable circumstances (article 63-2). When imprisoned, the person has no specific right to inform third parties, especially because of the secrecy duty during judicial investigations.
Germany	
Greece	Third persons are not informed. Only the parents in case of minors.
Hungary	No.
Ireland	Even prior to the introduction of this directive it was commonplace for the member in charge of persons in custody to advise them of their entitlement to notify a family member or similar. The particulars of who is notified are recorded on the custody record. A sample custody record is attached. From time to time a person is not permitted to contact a given individual generally because of a belief that that individual is either complicit or in a position to interfere with the evidence gathering process. The situation is particularly acute when a young person is detained and where rather than having their relation parent attend with them during questioning an independent outside responsible adult is generally selected. This is done on the basis that the parent might be in some way involved in the child's offending but in reality the parent will likely be much more solicitous of the child's welfare than the “responsible adult” generally a person who is on good terms with the police.
Italy	No except for children
Latvia	No changes needed, this right can be exercised without undue delay.
Lithuania	It is indicated in the Lithuanian law that about the deprivation of liberty a third person (i.e. family member or close relative) should be notified without a delay.
Luxembourg	The legal disposition are the ones contained in article 39 stipulating Art 39 (1) Si les nécessités de l'enquête l'exigent, l'officier de police judiciaire peut, avec l'autorisation du procureur d'Etat, retenir pendant un délai qui ne peut excéder vingt-quatre heures, les personnes contre lesquelles il existe des indices graves et concordants de nature à motiver leur inculpation. (2) Le délai de vingt-quatre heures court à partir du moment où la personne est retenue en fait par la force publique. (3) A moins que les nécessités de l'enquête ne s'y opposent, la personne retenue est, dès sa rétention, informée par écrit et contre récépissé, dans une langue qu'elle comprend, sauf les cas d'impossibilité matérielle dûment constatés, de son droit de prévenir une personne de son choix. Un téléphone est mis à sa disposition à cet effet. In practice, the written information is not given to the person. In addition, the cases of « material impossibility » are not defined nor clearly indicated but the police officers apply standard formulary and vague phrases in order not to grant the possibility to inform a third person concerning the situation of privation of liberty.
Malta	More immediate access to this right, desirable

Poland	According to the Article 244 § 2 CCP a detainee shall be informed, immediately after detention, about his or her rights. Although this regulation precises some rights of a detainee, there isn't indicated – among them – the right to inform at least one person nominated by a detainee (such as a relative or an employer) on his or her depravation of liberty without undue delay. (Such right isn't also indicated in the contents of the Article 607l CCP in aspects concerning the detention of a person upon the basis of a European Arrest Warrant). However both the Article 244 § 5 CCP and the Article 607l § 4 CCP entitle the Minister of Justice to issue ordinances including the determination of model letters of rights of detainees. Such ordinances have already been issued. They are: the ordinance of the 3rd of June, 2015 (Journal of Laws of 2015, item 835) and the ordinance of the 11th of June, 2015 (Journal of Laws of 2015, item 874). Either in the model letter of rights of a detainee or the model letter of a detainee on the basis of a European Arrest Warrant there are included information about the right of a detainee to inform about the detention a person closest to a detainee (for instance a relative, wife or husband) or other nominated person, an employer, a school, a university, a commander, a manager of a detainee's enterprise or an enterprise a detainee is responsible for. Beside the right to inform a third person about the detention, model letters of rights of detainees include also the rights about which detainees shall be informed immediately. In practice information on the whole set of rights of a detainee is delivered to him or her promptly. In turn, on the grounds of the Article 261 § 1 CCP the court is obliged to inform immediately a person closest to a suspect/an accused about the application of temporary arrest in reference to such suspect or accused. The regulation provides for that the person who shall be informed by the court may be nominated by a suspect/an accused. According to the Article 261 § 2 CCP, on the request of a suspect or an accused, the court may inform about the application of temporary arrest also another person instead or beside of a person closest to a suspect or an accused. In the light of the Article 261 § 3 CCP the court is obliged to inform immediately about the application of temporary arrest an employer, a school or a university or – in case a suspect or an accused is a soldier – his or her commander, or – if a suspect or an accused is an entrepreneur or a member of managing board of an enterprise – on a suspect's or an accused person's request – a manager of an enterprise. According to the Article 46 § 3 CPPO a detaining authority (police) shall inform – on the demand of a detainee – a person closest to a detainee and an employer about the detention in the proceedings on a petty offence. There is no demand of prompt or immediate information. However, if a detainee is a soldier, the detaining authority shall inform immediately a proper commander of the military unit even a detainee doesn't require it. According to the Article 46 § 7, the Minister of Justice is entitled to issue the ordinance which includes the model letter of rights of a detainee in proceedings on a petty offence. Nowadays, such ordinance exists (it's the ordinance on the 20th of May, 2015, Journal of Laws from 2015, item 762). In the model letter of rights of a detainee there is repeated and exposed the right to require the information for a third person (a person closest to a detainee or an employer) about the detention. In practice, letters of rights are delivered to detainees in proceedings on petty offences promptly.
Portugal	The Portuguese law gives the right to have a third person notified of the deprivation of liberty as soon as it occurs.
Romania	
Slovakia	Sec 74 para 1 CCP: A notification on the remand in custody issued by a court or a judge in the pre-trial proceedings shall be served without delay to a relative of the accused or another person designated by the accused, and to his defence counsel; the notification may be served on the person designated by the accused only if this does not prejudice the purpose of the custody. The notification on taking a member of the armed forces or army corps in custody shall be served on his commanding officer or chief. The notification on the custody of a job applicant shall be delivered to the respective employment office. The court and in pre-trial proceedings the judge for pre-trial proceedings shall notify on the custody of a foreigner also the consular office of a state of his nationality or his residence, unless the international treaty stipulates otherwise. This applies however only in case of detention (custody), not apprehension of a suspect.
Slovenia	No changes needed. The right is provided.
Spain	Without undue delay. No issues arise on this regard.
Sweden	In order to comply with the Directive, there is a need for clarification that the suspect´s right to have a third person informed shall be exercised without undue delay.

The Netherlands	The existing provision of the instructions of the police (article 27 Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren) does stipulate that on request of the suspect/ accuses a third party will be informed as soon as possible. No changes need to be made.

(b)	*any issues relating to the application of the right to a child.*
Austria	None
Belgium	No.
Bulgaria	There are several points where changes need to be made as regards the application of this right to a child. For the time being the law requires that the holder of parental responsibility of the child is to be informed of the deprivation of liberty only *but not of the reasons pertaining thereto*. So Bulgarian authorities have to transpose this requirement of the Directive into national law. Another point is the exception formulated by Article 5.2 of the Directive concerning the case where notification of the holder of parental responsibility would be contrary to the best interests of the child. This exception does not exist in Bulgarian law at present, so Bulgarian authorities have to transpose it into national law.
Croatia	No changes are needed, as it is prescribed in Article 63. of Croatian Law on Juvenile Courts.
Cyprus	This is adequately covered by Article 3(2)(b) of the Rights of Persons Arrested and Detained into Custody Law of 2005. There are no issues. (see answer in 6(a) above)
Czech Republic	Act no. 218/2003 Coll., on judiciary in cases of youth regulates this issue specifically in Section 46(2), which states that following persons have to be informed: legal representative (by which it is meant a person having parental responsibility), employer, centre of the Probation and Mediation service and authority for social legal protection of children. The information duty results from the detention, arrest and taking of a juvenile into custody.
Estonia	A new rule must adopted which provides for the obligation to inform the holder of parental responsibility of the child, unless it would be contrary to the best interest of the child.
Finland	No major issues, except for the fact that in our opinion a counsel/public defender should always be appointed when the suspect is under aged, at least in cases where he is deprived of liberty. Now the provision in law only states that the investigation authority needs to file an application to court for a public defender, if this is considered proper when considering the possibilities of assigning a public defender. A public defender must always be assigned if the suspect is minor (less "it's obvious that he doesn't need one), but this happens on request by the suspect. In our opinion this shouldn't be at the discretion of a minor – and in most cases the investigative authorities act quite well in this regard – but rather mandatory when he's deprived of liberty.
France	No specific issues.
Germany	
Greece	There is no information.
Hungary	No proposal.
Ireland	See reply to (a) above.
Italy	
Latvia	No changes needed, parents are informed without undue delay.
Lithuania	I have no information in regard to the application of the right to a child.
Luxembourg	No
Malta	Parent present during interrogation, hence a non-issue.
Poland	In the Code of Criminal Proceedings of 1997 as well as in the Code on Proceedings on Petty Offences of 2001 there are no separate and evident provisions relating to the application of the right to a suspected or accused child deprived of liberty. However existing regulations undoubtedly concern also persons who are still children from the point of view of the Polish civil law (the Civil Code of the 23rd of April, 1964 – consolidated text: Journal of Laws of 2014, item 121 with subsequent amendments) and the Convention on the Rights of the Child (it must be noted that in the Polish law the principle is that a person who bears the criminal responsibility or the responsibility for committing a petty offence shall be

	at least 17 years old). In reference to this issue – if a suspect or accused deprived of liberty is a person between 17 and 18 years old - it seems that there is the necessity to regulate in the normative sphere of CCP or CPPO the issue of obligatory informing (ex officio) - by the entitled authority - a legal representative of such minor. By the way – the separate issue is the detention of a juvenile in case of delinquency (a juvenile – generally – is a person under 17 years old). This issue is regulated in the Article 32g of the Act of the 26th of October, 1982 on the Proceedings on Juvenile Delinquency (consolidated text - Journal of Laws of 2014, item 382 with subsequent amendments). Due to the Article 32g § 5 and § 6 of the mentioned act, police immediately informs parents or a legal guardian of a juvenile about the detention of a juvenile. Police shall also inform the proper family court about the detention of a juvenile within 24 hours from the moment of detention.
Portugal	No information.
Romania	
Slovakia	The holder of parental responsibility of the child or body of the social and legal protection of children and social care are informed without delay.
Slovenia	No changes are needed. The right is provided.
Spain	No.
Sweden	There is a need for clarification that the custodian as soon as possible is entitled to information of the deprivation of liberty and that he or she at the same time is entitled to information of the reasons for decision.
The Netherlands	No changes needed, parents are informed without undue delay (article 27 Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambtenaren).

Question 7. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to the right to communicate with third persons regarding:*** *(a) the time when this right is exercised (i.e. without undue delay)?*	
Austria	None
Belgium	This specific right needs to be introduced in the Belgian law since it does not yet exists.
Bulgaria	Here again the standards set forth in Bulgarian law *go beyond the minimum standards as set forth by the Directive*. In my view, the manner in which this right is guaranteed both by law and in practice in my country *can be defined as an example of both good legislative approach and good practice* because of the following reasons: Regarding the time when this right is to be exercised, the national Execution of Punishments and Detention Act (EPDA) stipulates that detained accused persons shall be ***"promptly"*** informed of their right to communicate with third persons. This obviously goes beyond the standard "without undue delay" in the meaning of Article 6 of the Directive. Moreover, under Bulgarian law this right is not limited to communications with "at least one third person, such as a relative", nominated by the detainee. EPDA goes beyond this standard of the Directive and generally allows communications with "relatives and familiars". No limitations exist on the number of "relatives and familiars" to communicate with and there is no necessity for the detainee to explicitly nominate them. In my view, the higher standards set forth by Bulgarian law as regards the right to communicate with third persons during deprivation of liberty should be preserved in the future process of transposing the requirements of the Directive into Bulgarian law and in this respect Bulgarian authorities could rely on the "non-regression clause" of Article 14 of the Directive.
Croatia	No changes are needed, as it is prescribed in Article 139. of Croatian CPA.
Cyprus	This is adequately covered by Article 3(2) of the Rights of Persons Arrested and Detained into Custody Law of 2005 (see Question 6 (a) above)
Czech Republic	Such right is not specifically regulated in the domestic legislation. The Act no. 293/1993 Coll., about execution of custody regulates correspondence, phone calls and visits of the accused in custody.
Estonia	Currently, § 217(10) of CCP provides that a person detained as a suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a body conducting proceedings. This means that the person can ask the police to notify another person, and it is a police officer who actually performs this notification. Such notification is not in compliance with Article 6 of the Directive, which provides the right to communicate with a third person. Such right to communication needs to be provided for in order to implement the Directive.
Finland	See question 6, the answer is the same.
France	During custody, the deprived person has no right to directly communicate with a third person but has the right to inform a third person. When imprisoned, the person has no specific right to inform third parties, especially because of the secrecy duty during judicial investigations.
Germany	
Greece	Possibility of Information is provided.
Hungary	No proposal.
Ireland	Irish law in all probability complies adequately with the directive in this regard
Italy	There should be a specific rule introduced

Latvia	There is no such a right directly provided in the law. However, there are no restrictions to communicate with third persons, according to regime of investigative prison (if a person is detained). Restrictions to communicate with specified persons could be applied as a safety measure to suspects and accused persons.
Lithuania	According to Lithuanian law the suspect enjoys a right of one call to a family member or to a close relative when the decision was made to arrest him/her temporarily or to detent him/her in the remand prison. While during the period of arrest the suspect has no right to communicate with the third persons. The law foresees the right for the suspect to make phone calls to family members and relatives from the remand prison and the right to meet with any third person at the remand prison if there is no written prohibition from the prosecutor or the court for the phone calls or the meetings. As the law has changed from the 1st of September in regard of the right to communicate with third persons during the period of remand detention, there is no information about the time when this right is exercised. Time limits are not indicated in the law but it comes from the spirit of the law that this right should be exercised without undue delay. To my opinion, the law should foresee that the right to communicate with the third person should be exercised without delay.
Luxembourg	The legal disposition concerning the interdiction of communication is the following one: Art 84 (2) Lorsque les nécessités de l'instruction l'exigent, le juge d'instruction peut prononcer une interdiction de communiquer pour une période de dix jours. Il peut la renouveler une seule fois pour une même période de dix jours. En aucun cas l'interdiction de communiquer ne s'applique au conseil de l'inculpé. Meanwhile in practise the instruction judges very often deliver the Regime A of preventive detention, which offers very low communication, no telephone calls are allowed so that through the practise many preventive detainees suffer a very difficult situation for sometimes months. Only the accordance of regime B permits communication with the exteriors. This situation has to improve even though that the attribution of the strict regime A is not motivated by a written decision taken by the investigation judge. There is though no communication of reasons for maintaining a person under a regime without the possibility of communication. Also the daily regime of detention in regime A is harder as the cells are closed and a small promenade of 1 hour is only allowed, according to the recitals of preventive detainees.
Malta	More immediate access to the right desirable
Poland	Neither Polish Code of Criminal Proceedings of 1997 nor the Code of Proceedings on Petty Offences of 2001 provides for regulations concerning the right of a detainee to communicate without undue delay with at least one third person (such as a relative). No specific regulation of the Code of Criminal Proceedings indicates and determines such right in reference to a suspect or an accused deprived of liberty in a consequence of the application of temporary arrest. However the matter of contacts of a temporarily arrested persons with other subjects is regulated in the Executive Criminal Code of 1997. First of all it's worthy to remark that – according to the Article 210 ECC – if a person temporarily arrested is taken to a custody, he or she shall be immediately informed about his or her rights and duties. In turn, according to the Article 211 § 2 ECC, a temporarily arrested person is entitled to inform (immediately after he or she was taken to a custody) a person closest to him or her, an association, an organization or an institution as well as his or her defence lawyer about the place of stay. Moreover, a temporarily arrested foreigner is entitled to inform about his or her place of stay a proper consular office or a proper diplomatic representative. The Article 215 § 1 ECC states that a person temporarily arrested has the right to communicate – in absence of other persons or by correspondence - with his or her defence lawyer, a proxy (who is an advocate or a legal advisor) or another representative approved by the President of the Chamber of The European Court of Human Rights. The authority can reserve that its official or a person entitled by the authority will be present during the visit of a subject in the custody to meet with a temporarily arrested person. According to the Article 215 § 1a ECC, if a temporarily arrested person is a foreigner, he or she has the right to communicate with a proper consular office or a proper diplomatic representative. If such temporarily arrested person is a stateless person, he or she

	has the right to communicate with the representative of the state of his or her permanent place of residence. According to the Article 217 § 1 ECC a person who is temporarily arrested gets the opportunity to visit with other subjects (also with a person closest to him or her) by courtesy of the proper authority. Due to the Article 217 § 1a ECC a temporarily arrested person is entitled to have, at least, one visit with his or her closest person per month. The Article 217 § 1b ECC states that the denial of approval is exceptional and it exists if there is the motivated fear that the visit would be used in order to illegal obstructing of the criminal proceedings or the visit would be used to commit a crime (especially to abetting to a crime). The Article 217 § 1c ECC provides for a possibility to challenge to the court the decision on denial of the approval for the visit of a temporarily arrested person by a person closest to him or her. The right to challenge such decision is guaranteed for a temporarily arrested person and a person closest to him or her who applies for the visit. Unfortunately, on the grounds of the Executive Criminal Code it's not precised that the right to visit (to communicate) with a person closest to a person temporarily arrested (a relative) concerns the possibility to have such visit (communication) without undue delay. By the way, the visit with a relative is just one aspect of the communication with such third person and the other aspects are excluded by the silence of provisions. In my opinion, Polish regulations need to be improved in order to reach the standard of the EU directive 2013/48.
Portugal	This right should be allowed before the first questioning (or in the moment of deprivation of liberty).
Romania	
Slovakia	In this respect the time is not explicitly stated.
Slovenia	No changes are needed. The right is provided.
Spain	No changes are needed. This right was implemented in our law through this directive.
Sweden	There is a need for clarification, by legislation, that the suspect´s the right to communicate with a third person shall be provided for without undue delay. Restrictions in the suspected person´s contacts with the outside world are frequently granted by the court when deciding on detention. Usage of restrictions can obviously be destructive for the suspect, especially in combination with lengthy periods of detention. To emphasize the importance of the matter and in order to comply with the Directive, a legislative amendment must be considered necessary. Such an amendment should expressly declare that the right to communication shall apply without undue delay.
The Netherlands	This specific right needs to be introduced in the Dutch law since it does not yet exists. However, there are no restrictions to communicate with third persons, according to regime of investigative prison (if a person is detained). Restrictions to communicate with specified persons could be applied as a safety measure to suspects and accused persons.

(b) the limitations or deferrals imposed on this right?	
Austria	None
Belgium	See the previous answer.
Bulgaria	In my view, no changes are needed regarding the limitations or deferrals imposed on this right. The respective legal provisions of Bulgarian law seem to comply with the standards of the Directive to a sufficient degree.
Croatia	No changes are needed, as it is prescribed in Article 139. of Croatian CPA.
Cyprus	Currently Article 3(3)(b) of the Rights of Persons Arrested and Detained into Custody Law of 2005 provides that the right to communicate with third persons might be denied for no more than 12 hours after the arrest of a person provided that there is reasonable suspicion that the arrested person might: (a) (a) lead to destruction or concealment of evidence related to the investigation of the offense, (b) prevent the arrest or questioning of another person in relation to the offense or lead to his getaway, (c) lead to the commission of another offense, or death or personal injury of any person, or (d) result: (i) in damage to the interests of national security of the Republic or the constitutional or public order, or (ii) it results in obstruction of justice: These provisions do not apply in the case the arrested person is mentally impaired and cannot understand the procedure.
Czech Republic	The Act no. 293/1993 Coll., about execution of custody regulates specific conditions for correspondence, phone calls and visits of the accused in custody.
Estonia	As the right to communicate is not provided for (see answer to (a) above), any limitations or derogations must also be stipulated in our implementing legislation.
Finland	See question 6, the answer is the same.
France	See the previous answer.None.
Germany	
Greece	Sometimes it does not take place immediately following the arrest, but a limited time frame may be interjected.
Hungary	No proposal.
Ireland	As above.
Italy	
Latvia	Limitations or deferrals imposed on this right are not provided in law.
Lithuania	See the answer in (a).
Luxembourg	There is a possibility to make a request to the judge to modify this regime or to take a judicial decision, which may be appeal at the chamber of council.
Malta	No information
Poland	It has been already mentioned that due to the rule expressed in the Article 217 § 1 ECC a person who is temporarily arrested gets the opportunity to visit with other subjects (also with a person closest to him or her) by courtesy of the proper authority. According to the Article 217 § 1a ECC a temporarily arrested person is entitled to have, at least, one visit with his or her closest person per month. In turn, the Article 217 § 1b ECC states that the denial of approval is exceptional and its exists if there is the motivated fear that the visit (a form of communication) would be used in order to illegal obstructing of the criminal proceedings or the visit (a form of communication) would be used to commit a crime (especially to abetting to a crime). It seems that indicated prerequisites for decline of approval

	correspond to the general meaning of the phrase 'imperative requirements or proportionate operational requirements' contained in the Article 6(2) of the EU directive 2013/48.
Portugal	No information.
Romania	
Slovakia	Exercise of this right is determined in Act No. 221/2006 on the execution of the custody in the jail. The accused is entitled to receive visitors once a month for two hours, to send/receive correspondence without restriction, to phone call twice a month for 20 minutes to maximum five persons.
Slovenia	No changes are needed.
Spain	See answer below.
Sweden	Limitations or deferrals are generally imposed with reference to a risk of impeding the investigation. A more thorough examination by the investigative authorities and the courts whether the limitation or deferral is proportionate and/or necessary in the specific case would ensure the right of the suspect referred to in Article 6.
The Netherlands	See answer above.

Question 8. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to remedies regarding:*** *(a) the availability of a remedy for breach of the right of access to a lawyer or the right to communicate with third persons?*	
Austria	The problem of any remedy is that it is only an ex-post review of any breach of right to contact a lawyer; therefore, such a remedy has only a very limited effectivity. The situation would improve if the breach of right would entail – as a consequence – that the investigative measure may not be used in the trial, i.e that the evidence is inadmissible.
Belgium	This specific right – ensuring that notwithstanding a breach of the right to a lawyer the rights of the defence and the fairness of the proceedings are respected – still needs to be introduced in the Belgian law since it does only organize a system of inadmissibility of the declaration of the suspect if the latter has been interrogated without a previous confidential meeting with a lawyer and without the presence of the lawyer during the questioning within the first 24 hours or 48 hours of his deprivation of liberty (see article 47bis, §6, of the Belgian criminal procedure code).
Bulgaria	In my view, no changes need to be made in my country with respect to the remedies as required by Article 12 of the Directive. There are adequate procedures of appeal in cases of breaches of the right to access to a lawyer, which are available to the accused persons and are effective in practice. When the court's judgment is appealed on the grounds of a breach of the right to access to a lawyer, this might result in quashing the judgment. As regards the right of detainees to communicate with third persons, the situation is somewhat different. Breaches of this right committed by the detention authorities may be appealed before the competent prosecutor. However, Bulgarian law does not provide for judicial control on the prosecutor's decision. In my view, the law has to be respectively amended and judicial control has to be introduced in the future process of transposing the Directive.
Croatia	No changes are needed, as it is prescribed in Article 239.a. of Croatian CPA and in the section 23. Of Croatian CPA that prescribes legal remedies.
Cyprus	As mentioned above in Question 1 (c) if the right of access to a lawyer or the right to communicate with third persons is breached the member of the police that breached the said provisions will be disciplinary and criminally liable and furthermore a right is conferred upon the suspect and the accused whose rights are violated to damages against the State and the person or persons responsible for breach or denial of those rights independently of whether he/she has suffered any material damage. Also in 2006 the Independent Authority for the Investigation of Allegations and Complaints Against the Police (IAIACAP) was created by the Police (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006 (N. 9 (I) / 2006). The IAIACAP issues an Annual Report which records its work during the year. In their latest report (Annual Report 2013) they criticize the Police of not complying with the provisions of the Rights of Persons Arrested and Detained into Custody Law of 2005. Their observations are based on the filed complaints by Greek Cypriots, EU nationals and people from third countries. In their recommendations they suggest the amendment of the current law so that the accused has the right to communicate with the IAIACAP. I believe that this is a valid recommendation and it will add an important safeguard of the rights guaranteed by the said legislation
Czech Republic	These objections may be at present raised within standard legal remedies.
Estonia	Currently, the law does not provide for any effective remedies, and they need to be introduced.
Finland	The remedies in these kinds of cases are always reparatory by nature. "On paper" the legislation holds a good standard relating to breaches of the right of access to a lawyer (at least from 1.1.2016 onwards when new changes to legislation concerning evidence comes into force). However, the problem is documentation. For the time being the courts generally accept the signed "form" where the suspect affirms that he voluntarily waives his right to counsel. This is not sufficient.

	Regarding communication with third persons see question 6. Restrictions are used far too loosely and legislation may need to be tightened in this regard.
France	Regarding the breach of the right of access to a lawyer no changes needed, the person is entitled to challenge the proceedings. Nevertheless, actions that have chances of success are only based on the refusal or the omission to provide a lawyer which are quite rare cases. Aside these cases, the daily practice of depriving the lawyers to a complete to the file is voluntarily let without any remedies. The right to communicate with third persons are not provided and accordingly there is no remedy for such breaches.
Germany	
Greece	A remedy is provided for the first case.
Hungary	Remedies are granted.
Ireland	At present there is the opportunity of making an application to the High Court in any case of unlawful detention. Detention will be considered unlawful where it is conducted in circumstances where a person's constitutional rights are denied to them. The relief is claimed under Article 40 (4) of the Constitution. The difficulty with an Article 40 application is that it can only be made to the High Court. It is obviously made where High Court judges are available typically in the capital city. It is open to make an application to a High Court judge in any other place if one can be located. Because the judges tend to reside in Dublin and the High Court tends to sit in Dublin it is disadvantageous to persons in more remote locations to have to seek a High Court judge. It would be preferable if there was a designated judge available for each locality to hear urgent applications of this kind. This would involve conferring jurisdiction on a judge of the District Court. District Court judges tend to reside in their localities and are more easily available. That having been said they don't tend to have the experience that would come from High Court judges who routinely exercise Article 40 jurisdiction and a period of training in that regard would be desirable.
Italy	It is not admissible to appeal against this kind of decision, the only remedy is to claim that the questioning, without the previous access to a lawyer, is void and that the arrested person is to be released
Latvia	Regarding the breach of the right of access to a lawyer no changes needed, the person is entitled to lodge a complaint. The right to communicate with third persons are not provided in law and accordingly there is no remedy for such breach.
Lithuania	To my opinion, remedy for breach of the right of access to a lawyer or the right to communicate with third person should be indicated in the law clearly, herewith indicating officers that are responsible for the breach (e.g. pre-trial investigation officer, prosecutor)
Luxembourg	Request, recourse at the chamber of council with possibility to appeal at the chamber of council of the court of appeal
Malta	Available – Constitutional Court
Poland	Remedies in case of breaching of the right of access to a lawyer or the right to communicate with a third person are available in Polish proceedings regulations. The Article 246 § 1 CCP as well as the Article 47 § 1 CPPO state that a detainee is entitled to challenge the detention to the court. In his or her complaint, a detainee may require the checking of the legitimacy, legality and correctness of the detention. In practice, the correctness of the detention means the correctness of the particular activities required by law and connected with the detention (including, for instance, the proper information and instruction about rights of a detainee). So, the detention can be challenged if a detainee wasn't aware that he or she had the right of access to a lawyer or even – as it seems to me – he or she wasn't aware of the right to inform a third person about the detention. According to the Article 80a § 1 CCP the president of the court or a court referendary appoints – upon the motion of an accused person who didn't choose a defence lawyer – an ex officio defence lawyer.

	According to the Article 81 § 1 CPP – the president of the court (or a court referendary) appoints an ex officio defence lawyer for a suspect (an accused) who didn't choose a defence lawyer (if a suspect or an accused is entitled to have a defence lawyer or the defence is obligatory). In turn, the Article 81 § 1a states that the decision of the president of the court which declines the appointment of an ex officio defence lawyer is challengeable. In a particularly motivated situation, taking into account the important interest of the inquiry, a public prosecutor may decide to decline of the access of parties, their defence lawyers or proxies to participate in a certain activity of preparatory proceedings (see the Article 317 § 2 CCP). This decision of a public prosecutor, made in the preparatory proceedings, isn't challengeable. Taking into account the possible limitations of the right of access to a lawyer of a suspect in criminal proceedings (the Article 73 § 2 and § 3 CCP and the Article 317 § 2 CCP), as well as the Article 302 § 2 CCP (which states that parties of the proceedings and other subjects may challenge these acts of proceedings which are not decisions or orders breaching their rights) it could be said that orders of public prosecutors concerning the limitations of the right of access to a lawyer aren't challengeable. Orders (decisions) of entitled authority (police officials) on possible limitations of the right of access to a lawyer, which are indicated (reserved) in contents of the Article 245 § 1 CCP and in the Article 46 § 4 CPPO also aren't challengeable (there is no provision which makes available to challenge such orders). It's worthy to add that sometimes limitations of the right of access to a lawyer (especially if the law doesn't demand their particular motivation or justification) could be the source of breaching of the rules of a fair proceedings in criminal cases or in cases on petty offences. Due to the Article 301 CCP, a suspect – on his or her demand – shall be examined with the participation of the established defence lawyer. Non-appearance of such defence lawyer doesn't stanch the activity of examination of a suspect. It seems to be necessary to determine in the Polish law that the examination without the presence of a lawyer demands the decision of a public prosecutor which could be challenged by a suspect to the court. It also seems to be necessary to regulate what are the consequences of making by the court a decision that the suspect's right of the access to a lawyer was limited in an unjust way (so it was breached). It should be added that - considering general provisions of the procedure of appeal - the absolute infringement of the right of access to a lawyer (when the defence was obligatory) causes the necessity of quashing of a judgment. In other situation (if the infringement is relative) it could cause the quashing or commuting of the judgment. The circumstance that in the concrete criminal proceedings or in the concrete proceedings on a petty offence there was the infringement of the right of access to a lawyer might be brought up in procedure of appeal. The Article 217 § 1c of the Executive Criminal Code of 1997 provides for a possibility to challenge to the court the decision of the proper authority on denial of the approval for the visit of a temporarily arrested person by a person closest to him or her. The right to challenge such decision is guaranteed for a temporarily arrested person and a person closest to him or her who applies for the visit. On the grounds of above-presented remarks it can be said that Polish proceedings regulations need some corrections to fulfill the required standard of the EU directive 2013/48.
Portugal	No changes needed.
Romania	
Slovakia	In case of violation of defence rights, the accused may file an application to have the police actions examined; he/she may file an appeal or an appellate review. Moreover, constitutional complaint could be considered too.
Slovenia	No changes are needed.
Spain	In the scope of police arrest, the only remedy available is the « habeas corpus » remedy, which is, generally speaking, ineffective, because the Courts normally dismiss the petition « ab limine ». Special provision about it would be necessary, including the option for a lawyer of making use directly of this remedy. In addition, it would be recommendable that the judge admits this petition by electronic means. If the issue arises at Court stage, the suspect or accussed can challenge the situation using the current remedies against judicial decisions (I do not know any cases of this).
Sweden	As mentioned under Question 2(d) most decisions on limiting or refusing access to lawyer can be reviewed by court. In exceptional cases, there might be a possibility to receive damages from the state, provided any damages caused by negligence can be proved.

	In many situations it can be questioned whether the above mentioned remedies are effective in the meaning of Article 13 ECHR. In case of a breach of access to lawyer, the damage may be irreparable. During recent years a number of judgements from the ECtHR have referred to the issue on how particular evidence have been achieved (see e.g. Case of Salduz v. Turkey 27/11/2008, Panovits v. Cyprus 11/12/2008, Yoldas v. Turkey 23/02/2010) Two basic principles of Swedish law are the principle of free production of evidence and the principle of free evaluation of evidence. With a few exemptions, there is no practice of examining the admissibility of particular evidence nor rejecting information as inadmissible. However, as the case-law of ECtHR is part of Swedish law and in the light of e.g. the above mentioned judgment, the question of admissibility may indirectly come on Swedish courts more frequently. In practice the requirements set out in Article 12.2 must also be taken into account. A decision to refuse contact with a third person can be reviewed by the court. As the court at this stage does not generally have the same knowledge about the circumstances of the case as the leader of the investigation, there is doubt that the remedy can be considered effective.
The Netherlands	If a non-compliance is established the court is authorized to impose a sanction according to article 359a NCCP, but whether a sanction should actually be imposed, and if so the nature of such sanction, depends on the merits of each case and especially on whether the suspect's interests are harmed. The Dutch Supreme Court has explicitly judged that in case a suspect did not get the opportunity to consult a lawyer prior to his first interrogation the results of that interrogation (the statement) cannot be used as evidence and should be excluded. In my view, no changes need to be made in my country with respect to the remedies as required by Article 12 of the Directive.

(b) the assessment of statements made by suspects or accused persons in breach of the right to a lawyer?	
Austria	The statements may be used against the suspect even if the right to a lawyer was breached, i.e such evidence is admissible in court. Such evidence must be inadmissible because it is the only effective means to safeguard the right of the suspect to a lawyer.
Belgium	See the previous answer.
Bulgaria	No changes are needed here too. According to Bulgarian law, statements made by suspects or accused persons in breach of the right to a lawyer are to be excluded form the evidential material that might be used as a basis of the court's judgment.
Croatia	No information, it is not prescribed in Croatian CPA, persons only have the right on legal remedies.
Cyprus	A statement obtained by a detainee in breach of his/her right of access to a lawyer might be rendered inadmissible in Court. As mentioned above there is no obligation on the part of the police to warn the suspect before arrest about his/her right to legal advice. This in my opinion is an omission of Cyprus Law which should be remedied. The scope of the said Cypriot legislation should be extended to include the right to of access to a lawyer to the suspect before he/she is arrested.
Czech Republic	See the previous answer.
Estonia	The law does not provide for exclusion of such statements from evidence, but the introduction on the relevant inadmissibility principle should be considered.
Finland	See previous answer.
France	Should be not taken into account as evidence but there is no control of such hypothesis.
Germany	
Greece	Any statement without representation by a counsel, should be considered only under the condition that the accused was informed in writing in a language he/she understands and that he/she signed the waiver from the relevant right. In practice, there is a pre-text noting that he/she was informed, which the accused then signs.
Hungary	Remedies are granted.
Ireland	The observations of the Supreme Court in the joint cases of White and Gormley are clearly to the effect that the Courts will look with increasing scepticism on supposed voluntary statements made in the absence of legal advice. The Gardai are themselves aware of this development and hence they have issued guidance to their members to accommodate this request. There will be a period of time during which old habits will die hard and a denial of access to lawyers by rouse or otherwise will continue to arise and there will be a greater incidence of challenge to such statements.
Italy	
Latvia	Evidence gathered in breach of the right to a lawyer may be only partially used or excluded entirety out of evidence.
Lithuania	To my opinion, the inadmissibility of such evidence should be indicated in the law.
Luxembourg	Depend of the individual case
Malta	Possible – removed from Court acts
Poland	The Polish Code of Criminal Proceedings of 1997 doesn't provide for a specific prohibition of evidence concerning the issue of excluding form evidence either the statements made by suspects or accused persons in breach of the right to a lawyer or other evidence gathered in breach of the right to a lawyer. In terms of the European Union minimal standard, the needed amendment of the Polish Code of Criminal Proceedings is at least the creation of a guarantee regulation prohibiting the possibility of using as the evidence the explanations or statements of suspects or accused which were made in breach of the right of access to a lawyer. The remarks above regard also, adequately, the provisions of the Polish Code of Proceedings on Petty Offences of 2001.
Portugal	No changes needed.

Romania	
Slovakia	Statements acquired in breach of right to a lawyer in case of mandatory counsel are unusable/inadmissible evidence. In cases other than mandatory counsel, breach of the right to a lawyer is sometimes difficult to prove. In general tapping of telephone calls or seizure of correspondence between the accused and, the counsel or between the different people of the defence counsel is not admitted. Information gained from the tapping of telephone calls or seizure of correspondence between the accused and the counsel cannot be used for the purpose of criminal process and must be destructed. This does not refer to information regarding issues when the defence counsel is not in a position of the counsel of the suspect. The evidence gained from inspections, searches, seizures or wiretapping carried out with the use of coercion or threat of coercion can be used only against the person who has used/carried out such coercion or threat of coercion.
Slovenia	No changes are needed.
Spain	This statement will be inadmissible as evidence.
Sweden	No information
The Netherlands	See answer above.

(c) the assessment of statements made by suspects or accused persons where a derogation of the right to a lawyer was authorised?	
Austria	None
Belgium	See the previous answer.
Bulgaria	I am not capable to answer this question, since Bulgarian procedural law does not provide for temporary derogations from the right to access to a lawyer in the sense of Article 3.5 and Article 3.6 of the Directive. In respect of this issue, please see the answer to Question 2 (a).
Croatia	No information, it is not prescribed in Croatian CPA, persons only have the right on legal remedies.
Cyprus	As mentioned above currently there is no derogation of the right to a lawyer.
Czech Republic	See answer to the question 8(a).
Estonia	Not applicable -- our law does not provide for any derogations.
Finland	See previous answer.
France	It depends on each cases if the derogation was according to the criteria of necessity of the investigations justified or not.
Germany	
Greece	There are no derogations regarding the right to a lawyer.
Hungary	No derogation, see above.
Ireland	Where a lawyer has been requested and this request has been denied it is likely that the Courts will be especially anxious to ensure that any resultant statement is genuinely voluntary. The Courts would be keenly aware of the public policy importance of not creating a temptation for police to improperly grant themselves derogations with the object of securing statements that otherwise would not become available to them.
Italy	
Latvia	Authorised derogation of the right to a lawyer is not provided in law.
Lithuania	As it was indicated above, the derogation of right to lawyer is impossible in Lithuania.
Luxembourg	Depend of the individual case
Malta	No information
Poland	Statements made by suspects or accused persons where a derogation of the right to a lawyer was authorized aren't excluded from evidence (there is no prohibition of evidence to use such statements in criminal proceedings and assess them from the point of view of free appraisal of evidence). No particular provisions of the Code of Criminal Proceedings of 1997 concern exactly such statements. The same regards also, adequately, the matter of the Polish Code of Proceedings on Petty Offences of 2001. Changes in the Polish law (either CCP or CPPO) - in the context of the European Union standard – will be welcomed.
Portugal	No changes needed.
Romania	
Slovakia	If the questioning in pre-trial period was performed in the absence of the lawyer who was unreachable, it is a legal interrogation.
Slovenia	No changes are needed.
Spain	No information
Sweden	No information
The Netherlands	Currently there is no derogation of the right to a lawyer, no changes need to be made.

Question 9. ***What changes need to be made in your Member State – covering both national law and national practice - with respect to the European Arrest Warrant regarding:*** *(a) the right to a lawyer in the executing Member State if your Member State is the executing Member State (e.g. effective exercise of rights, without undue delay, right to meet and communicate, record keeping)?*	
Austria	None
Belgium	No changes needed since this right is already duly organized in the Belgian law (see articles 11, § 1er, 3° - 12 – 13 - 16 – 31 of the law of 19 December 2003 relating to the European Arrest Warrant).
Bulgaria	The Extradition and European Arrest Warrant Act (EEAWA) regulates the issues relating to the application of the European Arrest Warrant (EAW) in Bulgaria. EEAWA provides for the subsidiary application of CPC where the former act does not contain explicit procedural provisions on extradition and EAW. Both judges and academicians in my country hold that no changes need to be made since the relevant provisions of EEAWA and CPC, construed in combination, as well as the national practice, fully comply with the requirements of the Directive concerning all the aspects of the right to a lawyer in the executing Member State as pointed out in Article 10.2 (a), (b) and (c) of the Directive, if Bulgaria is the executing Member State. I share this view.
Croatia	No changes are needed, as it is prescribed in the Article 24. of the Law on Judicial Cooperation in Criminal Matters with EU countries.
Cyprus	As regards persons who are arrested on the basis of a European Arrest Warrant (see Article 17 (1A) of the European Arrest Warrant and the surrender procedures between Member States of the European Union Law of 2004 L. 133(I)/2004), they are immediately provided with a document titled “Rights for Persons Arrested on the basis of a European Arrest Warrant”, in a simple and understandable language containing the following rights: -period of deprivation of liberty, -information about the content of the European Arrest Warrant on the basis of which he/she has been arrested, -assistance of a lawyer, -interpretation and translation, -possibility to consent for extradition to the issuing Member State, -the right to be heard.
Czech Republic	Carrying out of the proceedings on the execution of the EAW itself is a ground of mandatory defence. It means that the accused has to have a defence lawyer when the Czech Republic is the executing state and also cannot waive of this right (Section 14 of the Act no. 104/2013 Coll., about international judicial cooperation). The content of this right is the same as in case of the accused, see the previous replies.
Estonia	No changes need to be made
Finland	We haven’t encountered major problems. The National Bureau of Investigation (or the prosecutor) is usually active in finding a lawyer at an early stage.
France	Same observations as those made regarding custody since this right is already incorporated under French law, article 63-1 to 63-7 applicable to custody being applicable by article 695-27.
Germany	
Greece	A right to communication under good circumstances is provided. Record keeping.
Hungary	In court procedure related to European Arrest Warrant the presence of the defence lawyer is obligatory. The court does not hold the trial without defence lawyer. The public defender is appointed by the investigation authority, because in case of deprivation of liberty the assistance of the defender is obligatory. Of course, it is also possible to appoint a private defender at any time. No suggestion for any change.
Ireland	Irish law is in all probability in full compliance with the requirements of the directive insofar the European Arrest Warrants are concerned.

	In practice in Ireland the view is taken that once the warrant has executed a person must be brought immediately before the High Court. No interrogation of a suspect in the circumstances is permitted. The High Court are scrupulous in ensuring that the person brought before them is capable of following the proceedings in a language that they understand. Translation and interpretation is routinely provided. The Court also are anxious to ensure that a person is legally represented from the outset and is prepared to assign lawyers where the suspected person does not have a lawyer of his own choice. While there is no statutory scheme governing this, there are practitioners who are known to the Court to be familiar with these cases and who are readily available to accept an assignment in circumstances that arise.
Italy	At the moment, when it is required by another Member State the arrest of a person, there shall applied the same safeguards applicable for a person arrested / Kept in custody in force of a domestic arrest warrant.
Latvia	No changes needed, effective exercise of this right is granted.
Lithuania	The exercise of the rights is quite effective for the extraditee in the EAW proceedings because he/she enjoys the same rights as the suspect in criminal proceedings.
Luxembourg	Listed up in the AT case vs Luxemburg Proposition Record keeping and immediate transfers of documents concerning the declarations should be transferred
Malta	None – they are already in place
Poland	In my opinion, Polish regulations pretty well correspond to the required standard in this matter. According to the Article 607k § 2a CCP, in relation to a person who is detained on the basis of a European Arrest Warrant there are applied regulations of the Articles 244-246 and Article 248 CCP. The right to a lawyer is guaranteed (not only formally but also in practice). However, in Polish law on criminal proceedings there is no provision demanding that the proper Polish authority (if Poland is the executing Member State) is obliged to inform a detainee on the basis of a European Arrest Warrant, immediately after depravation of liberty, about his or her right to establish a lawyer in the issuing Member State. On the grounds of regulations mentioned above, as well as on the grounds of the Article 607l § 4 CCP and in the light of model letter of rights for persons detained on the basis of a European Arrest Warrant (attached to the Ordinance of the Minister of Justice of the 11th of June, 2015 - Journal of Laws of 2015, item 874) a detainee has the right to prompt contact with a lawyer (an advocate or a legal advisor) and to direct communication (conversation) with a lawyer. He or she is also entitled to have the assistance of a defence lawyer, chosen by him or her. If a detainee proved that he or she can't afford to have a chosen defence lawyer, the court may appoint a defence lawyer (ex officio defence lawyer). Other substantial rights in proceedings are also ensured. Due to the Article 607k § 5 CCP if a issuing Member State asked for the questioning of a pursued person, such person shall be questioned in the presence of a person indicated in the European Arrest Warrant. The Article 607l § 1 CCP states that in the court sitting, where the issue of surrender or the application of temporary arrest is considered, may participate a public prosecutor and a defence lawyer. Participation of a lawyer during the questioning of a detainee on the basis of a European Arrest Warrant is a logical result of the right of having assistance of a defence lawyers which is guaranteed. Activities during the proceedings are recorded. Also a copy of the letter of rights – signed by a detainee – is submitted to files.
Portugal	No changes needed. The law gives the right to lawyer in the pre-trial stage.
Romania	
Slovakia	Relevant legislation: Act No. 154/2010 on EAW In this respect the Directive on the EAW was literally transposed to the Slovak legislation and no significant discrepancies thus exist.
Slovenia	The right to a lawyer is guaranteed, no changes are needed.
Spain	None.
Sweden	Taking account of the recommended changes as mentioned under the questions above Swedish law is in general compliance with the requirements set out in the Directive.

The Netherlands	The right of access to a lawyer in EAW proceedings currently does not lead to major problems. Although there is not yet an explicit legal basis for this right, in practice the police tend to act in accordance with the provisions of the Directive and call up a duty lawyer whenever a person is arrested on the basis of an EAW. However, this practice needs to be formalized adding an explicit legal basis to the Dutch Surrender Act (Overleveringswet).

(b) the right to a lawyer in the issuing Member State if your Member State is the issuing Member State (e.g. information without undue delay)?	
Austria	There is no provision that the suspect must be informed about the right to appoint a lawyer in the issuing member state.
Belgium	No changes needed since the general right to a lawyer is already duly recognized and organized in the Belgian law and in the Belgian practice (see article 47bis, § 2, of the Belgian criminal procedure code).
Bulgaria	Neither EEAWA, nor CPC contain provisions concerning the right to a lawyer in the issuing Member State, if Bulgaria is the issuing Member State. Therefore, changes have to be made by transposing all the requirements of Article 10.4 of the Directive into Bulgarian law.
Croatia	There is no such provision in the Law on Judicial Cooperation in Criminal Matters with EU countries or in Croatian CPA.
Cyprus	Currently there is no such provision in our current legislation because the Directive 2012/13/EU is not yet implemented in Cyprus (see answer in Question 1 (a))
Czech Republic	Any person against whom the criminal proceedings are carried out may have a defence lawyer (see the previous replies). However, the domestic legislation does not contain the mechanisms stipulated in the Article 10(4)(5) of the Directive.
Estonia	No changes need to be made
Finland	This is a whole new area for Finland and new legislation is definitely needed. For the time being usually only in cases where the person sought is aware of the EAW is active himself, a lawyer in the issuing state is sought (on his own expense).
France	See above.
Germany	
Greece	There is no relevant explicit provision. It should be regulated.
Hungary	In any case, the public defender is appointed by the investigation authority, because in case of deprivation of liberty the assistance of the defender is obligatory. No suggestion for any change.
Ireland	There is no provision whatsoever for Ireland putting in place a system of access to a lawyer in Ireland in respect of Irish requests for surrender. This is controversial and is considered unacceptable by defence lawyers. Defence lawyers take the view that if Ireland are seeking the return to this jurisdiction of the person for trial that it is inevitable that the person will be accorded legal representation upon their arrival in Ireland and that therefore it is artificial to deny access during the surrender procedure where a person might get the greatest benefit from the legal advice to which they will ultimately be entitled.
Italy	As Above (answer to question 9)
Latvia	No changes needed, effective exercise of this right is granted.
Lithuania	Such provisions are not incorporated in Lithuanian law yet.
Luxembourg	Should be a minimum guarantee foreseen in the legislation of the issuing state
Malta	Still has to be introduced in our legislation
Poland	There are no specific regulations in the Polish Code of Criminal Proceedings of 1997 concerning the right to a lawyer for a pursued person if Poland is the issuing Member State. Proper regulation fulfilling the required standard of the Article 10(5) is needed.
Portugal	No changes needed.
Romania	
Slovakia	Relevant legislation: Act No. 154/2010 on EAW In this respect the Directive on the EAW was literally transposed to the Slovak legislation and no significant discrepancies thus exist.
Slovenia	The right to a lawyer is guaranteed, no changes are needed. If the requested person appoints a lawyer, he/she has all the rights that a lawyer would have if Slovenia was the executing Member State.
Spain	Legal aid will be granted once the person arrives in Spain. It would be necessary to appoint a public lawyer, unless, once the issuing state had been informed that the person has been caught in the

	executing State. This appointed allows the public lawyer in executing State to contact a colleague in the issuing State to collaborate in the case.
Sweden	In order to comply with the Directive there is a need for amendment to ensure the right to a lawyer in Sweden.
The Netherlands	In this regard a distinction has to be made between a Dutch EAW issued for the purposes of the execution of a final judgement (1) and a Dutch EAW issued for the purposes of a prosecution (2). Ad 1) When a judgement is final, the person in question under Dutch law no longer qualifies as suspect / accused (verdachte) but as a convict (veroordeelde). The legal position of a convict is extremely limited under Dutch law (for example such a person does not have a right of access to the case file per sem no right to a lawyer etc.). However, in practice the Dutch authorities might be willing to provide a Dutch lawyer with information in such a situation. Ad 2) Any person arrested on the basis of such an EAW is automatically considered a suspect/accused under Dutch law. (s)he will therefore also have all the rights of a suspect/accused. However, bar exceptional situations, there is no right to a legal aid lawyer. This right will only arise as soon as the wanted person arrives in the Netherlands.

(c) the right to a lawyer in the issuing Member State if your Member State is the executing Member State (steps to be taken by the executing Member State)?	
Austria	There is no provision that the suspect must be informed about the right to appoint a lawyer in the issuing member state.
Belgium	No specific provision does exists in the Belgian law in that respect, and needs thus to be implemented in the Belgian law.
Bulgaria	Neither EEAWA, nor CPC contain provisions concerning the right to a lawyer in the issuing Member State, if Bulgaria is the executing Member State. Therefore, changes have to be made by transposing all the requirements of Article 10.5 of the Directive into Bulgarian law.
Croatia	There is no such provision in the Law on Judicial Cooperation in Criminal Matters with EU countries or in Croatian CPA.
Cyprus	Currently there is no such provision in our current legislation because the Directive 2012/13/EU is not yet implemented in Cyprus (see answer in Question 1 (a))
Czech Republic	See the previous reply.
Estonia	The obligation of the authorities to provide information to facilitate the exercise of the right to a lawyer need to be introduced.
Finland	See previous answer.
France	No provision states that is a right to a lawyer in the issuing member state.
Germany	
Greece	Providing a clear legislative framework, coupled with the ability of the executing Member State, to provide a free counsel.
Hungary	No information. A European database and/or a closer cooperation between the competent authorities in this issue would be useful.
Ireland	The situation is similar. One routinely sees cases where a person who is privately funded and has access to lawyers in the requesting State is in a position to put more information before the Irish Court than a person who is reliant solely on the Court-appointed Irish lawyer. This lead as a minimum to a delay in proceedings where questions in respect of the law of the requesting State need to be channelled by the Court through the executing member State's lawyers back to the lawyers for the Government in the requesting State. On the contrary where a person has joint representation, privately funded of course, the answers to such questions can generally be procured very quickly leading to a more satisfactory disposition of the proceedings in a shorter time frame, particularly important if the detained person has not been admitted to bail (conditional release).
Italy	No provision about request to appoint a lawyer in the issuing state unless provided by the national law of the requesting state. Usually the issuing state should give information to the executing state about the rules to comply with.
Latvia	No changes needed, effective exercise of this right is granted.
Lithuania	Such provisions are not incorporated in Lithuanian law yet.
Luxembourg	Should be a minimum guarantee foreseen in the legislation of the executing state
Malta	Making available to the lawyer in the executing Member State all the information / Documentation sent by the Issuing Member State.
Poland	As it was indicated above, in Polish CCP there are no regulations determining the duty of the proper Polish authority (if Poland is the executing Member State) to inform a detainee on the basis of a European Arrest Warrant, immediately after depravation of liberty, about his or her right to establish a lawyer in the issuing Member State. Proper provision fulfilling the required standard of the Article 10(4) is needed.
Portugal	No changes needed.
Romania	
Slovakia	Relevant legislation: Act No. 154/2010 on EAW

	In this respect the Directive on the EAW was literally transposed to the Slovak legislation and no significant discrepancies thus exist.
Slovenia	As far as I am informed the Slovenian law doesn't provide that Slovenia as an executing Member State should inform the requested person that he/she has a right to a lawyer in the issuing Member State. In this respect the law implementing EAW should be amended.
Spain	See answers below.
Sweden	In order to comply with the Directive there is a need for amendment to ensure that - information is provided to the suspect about his or her right to appoint a lawyer in the issuing state. - prompt information is given to the competent authority in the issuing state when the requested person wish to exercise the right to a lawyer in that state.
The Netherlands	Every person arrested in the Netherlands on the basis of an EAW is provided with a letter of rights (http://bit.ly/1U6LwJt). However, this letter does not mention the right of the wanted person to appoint a lawyer in the issuing member state.

(d) the use of a European Supervision Order in appropriate cases?	
Austria	None
Belgium	No specific provision does exists in the Belgian law in that respect.
Bulgaria	No information.
Croatia	No information.
Cyprus	There is no provision in the current legislation for a European Supervision Order. The Council Framework Decision 2009/829/JHA of 23 October 2009 has not been adopted yet by Cyprus. According to the Ministry of Justice and Public Order the said Decision will be implemented by early 2016.
Czech Republic	The Czech Republic has already implemented ESO into the Act no. 104/2013 Coll., about international judicial cooperation.
Estonia	This possibility needs to be introduced.
Finland	Even though Finland has implemented the ESO, we don't have experience of it. This is likely due to the fact that many countries have not yet implemented it and therefore the ESO is not even considered to be applied.
France	
Germany	
Greece	Explicit provision for the principle of proportionality.
Hungary	No information.
Ireland	The European Supervision Order is not properly employed in Ireland at all.
Italy	Not used for pre – trial detention
Latvia	No regulation. This procedure needs to be provided in law.
Lithuania	I have no information that European Supervision Order was used in practise.
Luxembourg	Should be the objective to reach but for this it would be helpful to invite the European member states concrete the application of the Council Framework decision 2009/829/JHA of 23 October 2009. Otherwise the possibilities of use of this instrument stay limited even though the use of ESO would permit to investigate cases offering the possibility to concerned person to stay in their environment regarding their familiarly and professional situation. In addition, the ESO would be an instrument to reduce the judicial costs compared to the EAW
Malta	Legislation is already in force although not often used.
Poland	The Polish Code of Criminal Proceedings of 1997 regulates issues concerning the so-called European Supervision Order and its use in Chapter 65c and 65d. Existing provisions are the result of the implementation of the Council Framework Decision 2009/829/JHA of the 23rd of October, 2009. Both mentioned chapters were introduced to CCP by the Act of the 31st of August, 2012 on amending the Code of Criminal Proceedings (Journal of Laws of the 2nd of October, 2012, item 1091). I have no information about the practice of application of the provisions concerning a European Supervision Order (no examples of appropriate cases).
Portugal	No changes needed.
Romania	
Slovakia	Relevant legislation: Act No. 154/2010 on EAW In this respect the Directive on the EAW was literally transposed to the Slovak legislation and no significant discrepancies thus exist.
Slovenia	Slovenian law provides for many alternative measures to pre-trial detention (house arrest, an obligation to report regularly to police or to reside at a specified place, etc.), so there is no specific need to implement any important changes in this respect. In practice however, these alternative measures are rarely used when the requested person is non-resident in Slovenia.
Spain	There is no legal provision at this respect due to lack of transposition of the Council Framework decision.

Sweden	Legislation regarding the use of an European Supervision Order has entered into force as late as 1 August 2015. Hence, No general practice has yet been established.
The Netherlands	We do not understand this question. It does not make sense to issue a European Supervision Order in EAW cases. Please clarify if you want an answer to this question.

Question 10. ***Has the directive brought important changes on the right to access to a lawyer in criminal proceedings in the legislation and practice of your Member State? what are the main aspects that could be improved, both at EU and national level (apart from your answers already given)?***	
Austria	A major improvement would be the mandatory contact with a lawyer before waiving the right to have a lawyer present at the interrogation of the suspect. In practice, the police often exercise pressure on the suspect to waive the right to a lawyer; in order to prevent such practice, the suspect should have (at least phone) contact with a lawyer (otherwise the interrogation should be illicit) and the complete interrogation should be taped (video and/or audio).
Belgium	Since the Directive has not yet been implemented in the Belgian law, and since the Belgian judicial authorities consider that until then (or until the 27 November 2016), the Directive has no power in Belgium, no important changes has been brought by the Directive.
Bulgaria	Since the requirements of the Directive are not yet transposed into Bulgarian law, I cannot say that the Directive has brought any changes so far. Respectively I am not capable to add anything more to my answers already given.
Croatia	This directive has not been implemented yet in Croatian law.
Cyprus	As mentioned above the enactment of the three amending bills will be ratified hopefully by June 2016. The important change that will be eventually brought to Cyprus Law is the provision guaranteeing to all detainees the right to have their lawyer present during police questioning. Currently the legislation does not provide for the presence of a lawyer during police questioning except if the person to be interviewed is under 18 years of age or suffers from mental incapacity. The presence of a lawyer during questioning will safeguard the suspect or accused from undue pressure and/or oppression by the police and will enhance the protection of the right against self-incrimination. Therefore I believe that the transposition of Article 3 section 3 of the Directive in the national law will be a very significant development towards a more just system, guaranteeing that the suspect or the accused is not mistreated in any way by the police. Secondly the Cyprus Republic should enact a law based solely on the Directive to avoid any conflicting provisions and have a unified legislation which provides clear provisions about the right of access to a lawyer including as mentioned above the right to of access to a lawyer to the suspect before he/she is arrested. I believe that Article 2 of the Directive (Scope) should apply not only to suspects and accused persons but also apply to every person that is questioned by the Police (or any other competent authority) even though at the time they are not suspect or accused because during police questioning the person that is being questioned may say something that will incriminate himself/herself. Also the Directive should apply when a person is not yet suspect or accused but there is court order for search of his/her premises. Also I believe that Article 5 (2) of the Directive (Letter of Rights in European Arrest Warrant proceedings) should be modified so that the "Rights for Persons Arrested on the basis of a European Arrest Warrant" document contain the right to remain silent and the right of free legal aid/assistance and the conditions required of such assistance.
Czech Republic	The Czech Republic has not yet implemented this Directive.
Estonia	The Directive has not brought important changes. Protecting the right to confidentiality, and ensuring proper use of waivers are the main areas that could be improved
Finland	
France	No, since the Directive has not yet been implemented in France.
Germany	

Greece	To enable telephone communications with the prisoners, with the initiative of the lawyer. In practice, the lawyer can't summon the detainee nor notify him of anything, unless he/she goes to prison. Better conditions of communication between lawyers of detainees in detention centres and enlargement of visiting time.
Hungary	No, it was already granted.
Ireland	For further consideration. The reality is that White & Gormley and the DPP's direction was the main catalyst for change. Residual issues involve training, rota and full compliance with best standards.
Italy	With a general obligation to comply with the E.U. Directives on safeguards and, in case, any eith subsequent amendments (i.e. what happened with in absentia proceedings)
Latvia	This directive has not been implemented yet.
Lithuania	This directive brought no important changes on the right to a lawyer in Lithuanian legislation and practise yet.
Luxembourg	No
Malta	Directive sparred amendments
Poland	In the Polish legal system there have appeared certain regulations inspired by the standard of the EU directive 2013/48. But, unfortunately, there is no the accomplishment of the full legal standard demanded by the EU legal instrument. The matter of the European Union directive standards of the right of access to a lawyer is the subject of ongoing works which concern either regulations of the Code of Criminal Proceedings or the Code of Proceedings on Petty Offences.
Portugal	No important changes were brought on the right to access to a lawyer in our Member State, but we think there is no need, for now, of any improvement.
Romania	
Slovakia	The directive has not been fully transposed yet.
Slovenia	The directive hasn't brought any really important changes.
Spain	The main important points in the directives regarding Spanish legislation are: (a) the right to have a private interview with the detainee in police station, and (b) the right to communicate with third person. The first issue was implemented in our law. The second no. In addition, at national level, it would be important to underline: 1- An Organic Law on the right to defense is strongly desired; 2- This Law would help to formulate a Habeas Corpus system more swift and efficient; 3. - Legal profession/National Bar should be present in the states bodies who issue action protocols for State Security Forces and Corps; and 4. - It would be desirable an unified criteria for all Spanish State Security Forces and Corps as regards rights and guarantees of accused and suspects persons. At European level, it would be convenient to have an unified criteria for European policies bodies, concretely, in relation to suspects and accused persons right to meet in private with his lawyer before making statements.
Sweden	As there is an ongoing implementation process regarding the Directive, it is too early to point out any specific changes. At EU level, a legislative act on legal aid would be an important measure to ensure the right of access to a lawyer (see Article 11 and recital 48).
The Netherlands	Not yet, a bill implementing the Directive is pending. A major improvement would be the mandatory contact with a lawyer before waiving the right to have a lawyer present at the interrogation of the suspect. In practice, the police often exercise pressure on the suspect to waive the right to a lawyer; in order to prevent such practice, the suspect should have (at least phone) contact with a lawyer (otherwise the interrogation should be illicit) and the complete interrogation should be taped (video and/or audio). Currently the legislation does not provide for the presence of a lawyer during police questioning except if the person to be interviewed is under 18 years of age or suffers from mental incapacity. The presence of a lawyer during questioning will safeguard the suspect or accused from undue pressure and/or oppression by the police and will enhance the protection of the right against self-incrimination. Therefore I believe that the transposition of Article 3 section 3 of the Directive in the national law will be a very significant development towards a more just system, guaranteeing that the suspect or the accused is not mistreated in any way by the police.
UK	**England and Wales**

	As explained above, the United Kingdom has chosen to opt out of adoption of the Directive. The current position on access to a lawyer is set out in the relevant Codes of Practice issued under s.66 of the Police and Criminal Evidence Act 1984. References to provisions with a 'C' prefix indicate paragraphs of Code of Practice C (detention, treatment and questioning of persons by police officers). Any person who is detained at a police station, or who attends voluntarily to assist with an investigation enjoys an absolute right to obtain legal advice or communicate with anyone outside the police station. Section 5 of Code C governs the right to have a third person informed of the deprivation of liberty; section 6 of the same governs the right of access to a lawyer. A person brought to a police station under arrest or a person arrested at the station after attending voluntarily must be told orally about his right to consult privately with a lawyer and of the right to obtain free and independent legal advice. He must also be told of his right to have someone informed of his arrest at no cost. [C§3.1] This right must also be set out in a written Notice of Rights and Entitlement to be provided to the detainee. [C§3.2(a)] A poster advertising the right to legal advice must be prominently displayed in the charging area of every police station. [C§6.3] Right of access to a lawyer Communication with a lawyer may be in person, in writing or by telephone. [C§6.1] the circumstances in which free legal advice is limited to telephone advice in accordance with the practice of the Defence Solicitor Call Centre is set out in Guidance Note 6B to Code C. Whenever legal advice is requested, the custody officer must act without delay to secure the provision of such advice. If the detainee waives his right, he must be asked why and any reasons recorded in the custody record or interview record. Reminders of the right to legal advice must be given on various occasions including by the custody officer [C§3.5]; immediately prior to the commencement or re-commencement of any interview [C§11.2; C§16.5]; before reviewing or considering extending the maximum period of detention without charge [C§15.4]; and after charge, if the officer wants to inform the detainee about the written statement or interview of another person relating to the offence [C§16.4]. Once it is clear that the detainee does not wish to speak to a lawyer, they should cease to be asked their reasons. [C§6.5] Where the detainee is a juvenile or mentally disordered or mentally vulnerable, an appropriate adult should consider on his behalf whether legal advice is required and may ask for a lawyer to attend even where the detainee has indicated that he does not want legal advice if the appropriate adult considers it in the best interests of the detainee. [C§6.5A] A detainee who has requested legal advice may not be interviewed or may not continue to be interviewed until they have received such advice except in a narrow set of circumstances, namely: (a) pre-charge, where the detainee is suspected to have committed an indictable offence (that is, an offence that can be tried in either the Magistrates' Court or the Crown Court) and there are reasonable grounds for believing that the exercise of the right of access to legal advice would lead to the cases set out in (b) below. (b) there are reasonable grounds for believing that (i) delay might lead to interference with, or harm to, evidence connected with an offence; interference with, or physical harm to, other people; serious loss of, or damage to, property; alerting other people suspected of having committed an offence but not yet arrested for it; or hinder the recovery of property obtained as a result of commission of an offence; (ii) awaiting the arrival of the lawyer who has agreed to attend would cause unreasonable delay to the investigation; (c) the lawyer nominated by the detainee cannot be contacted, has previously indicated they do not wish to be contacted, or has declined to attend; (d) the detainee has changed his mind and no longer wishes to have legal advice. [C§6.6; Annex B to Code C]

	The exercise of the right of access to a lawyer may only be delayed for as long as the grounds exist and in any event for no longer than 36 hours (or 48 hours in cases of suspected terrorism). [Annex B§6 to Code C; Annex B§6 to Code H] On the request of the detainee, the lawyer shall be permitted to be present at interview subject to the exceptions set out above. [C§6.8] The lawyer has the right to be present at any identification parade and the suspect must be given a reasonable opportunity to have that lawyer present if he wishes. [Annex B§1 to Code D] The lawyer has the right to be present at any confrontation and must be present unless their attendance would cause unreasonable delay. [Annex D§4 to Code D] All communications between the detainee and his lawyer must be held in private. This includes communications via telephone unless this is impractical because of the design and layout of the custody area or location of the telephones. The normal expectation is that facilities will be available for private communications, whether face to face or via telephone. [Note 6J to Code C] The right to free and independent legal advice continues after charge and prior to any court hearing. The duty solicitor scheme operates in all Magistrates' Courts in the country to enable defendants to receive free and independent legal advice prior to their first appearance for a criminal offence. Legal advice and representation at subsequent court hearings is arranged by instruction of a solicitor, which may be free subject to a successful application for legal aid to the Legal Aid Agency. The Legal Aid Agency assesses financial need and the interests of justice in considering any application. Different rules apply to legal aid in Scotland and Northern Ireland. Right of access to a lawyer in European Arrest Warrant proceedings The right of access to a lawyer in EAW proceedings is identical to that in non-EAW proceedings set out above. The sole exception is that the person in question is only entitled to legal advice by telephone whilst at the police station the justification for which is that such persons are not interviewed. There is no provision for legal advice or representation at public expense in the issuing state and there appears to be no plan to introduce it in the near future. Right to have a third person informed and to communicate with third persons The right to have a third person informed and to communicate with third persons are manifestations of the right not to be held incommunicado. Any person arrested and held in custody may, on request, have one person known to them or likely to take an interest in their welfare informed at public expense of their whereabouts as soon as practicable. If that person cannot be contacted, the detainee may choose two alternatives. If they cannot be contacted, the person in charge of detention or investigation has discretion to allow further attempts to be made. [C§5.1] The exercise of the right to have a third person informed may only be delayed in accordance with Annex B, which is summarised in (a) of the section above in relation to right of access to a lawyer. If the detainee agrees, he may receive visits from friends, family, or others likely to take an interest in his welfare or persons in whose welfare the detainee has an interest. This is at the custody officer's discretion. [C§5.4] Visits should be allowed when possible, subject to the presence of sufficient personnel to supervise a visit and any possible hindrance to the investigation. [Note to Code C §5B] If a friend, relative or person who has an interest in the detainee's welfare enquires about his whereabouts, this information is to be given with the agreement of the detainee and cannot be delayed. [C§5.5]
	Scotland

	Northern Ireland

Question 11. ***Do you have comments on an article of the directive not covered by any of the questions above?***	
Austria	No
Belgium	No.
Bulgaria	Yes, I do, and my short comments concern Article 7 of the Directive dedicated to the right to communicate with consular authorities. Both judges and academicians in my country hold that no changes need to be made in this matter since the relevant provisions of CPC, as well as the national practice, fully comply with the requirements of Article 7the Directive. I share this view.
Croatia	No.
Cyprus	No
Czech Republic	No.
Estonia	No
Finland	
France	No.
Germany	
Greece	No.
Hungary	No.
Ireland	For further consideration.
Italy	
Latvia	No.
Lithuania	The questions covered all the main issues related to this directive.
Luxembourg	Neither
Malta	No information
Poland	No, I don't.
Portugal	No.
Romania	
Slovakia	
Slovenia	No.
Spain	No.
Sweden	No comments
The Netherlands	No.

Question 12. ***Do you have any good practices to pass on, that you have not already mentioned? (N.B. This question is particularly important, given that one of the sections of the final report will focus on good practices.)***	
Austria	No
Belgium	Some Belgian investigating magistrates or Prosecutors accept that if requested by the concerned person of his/her lawyer, the lawyer of the victim, the person questioned for information or the witness may be present during the questioning of his client. It is indeed a real shame that the Directive did not extend the right of the presence of the lawyer also for the questionings of victims, person heard for information or witness although these kind of persons may also possibly be the subject of abuse, pressures or unfair attitudes of the interrogators…
Bulgaria	In my view, there is an example of good legislative approach and good practice in Bulgaria going in a helpful direction beyond the requirements of the Directive itself. The example refers to the application of Article 6 of the Directive relating to the right of the accused persons to communicate with third persons during detention. The positive aspect both of law and national practice is that the scope of third persons, with whom the accused persons may communicate, is expanded beyond the scope of persons pointed out by Article 6. Thus, under the respective provision of CPC, the accused persons have the unconditioned right to communicate with international experts, who may visit the detainees in compliance with the international treaties, to which Bulgaria is a party. Communications are also admissible, if the third persons are representatives of human rights defending NGOs or religious NGOs, or representatives of the mass media but under the condition that the communications with these representatives have been already permitted in writing by the prosecutor or the court.
Croatia	No.
Cyprus	As mentioned above in a nutshell I believe that the establishment of the Independent Authority for the Investigation of Allegations and Complaints Against the Police in 2006 is a good practice because even though we have more or less the legal framework demanded by the European Union in reality there are problems in complying with the law. Furthermore an inclusion of the right to communicate with the said independent authority in the legislation and also an expansion of the current IAIACAP which will include permanent criminal investigators, translators, photographers and other personnel will increase the confidence of the Public that the Police is under constant scrutiny and they comply with all the provisions of the Law. This will improve the administration of Justice and the protection of fundamental human rights.
Czech Republic	No.
Estonia	The fact that our law does not provide for any derogations from the right to access to a lawyer (and this rule is also widely accepted in practice without any complications) is certainly something that other Member States should consider.
Finland	
France	No.
Germany	
Greece	No.
Hungary	No.
Ireland	For further consideration.
Italy	No good practice applied but it should be appropriate to consent the lawyer in the issuing state to communicate the judicial authority in the executing state and vice versa.
Latvia	No.
Lithuania	There are no examples of good practises to pass on yet.
Luxembourg	Of course. The aces to a lawyer, object of the directive, makes only sense if the lawyer is granted full aces of the case file, before meeting the person he is supposed to “effectively assist”.

	If the assistance of a lawyer in pre-trial proceedings will in future be limited to his sole nomination with the only prerogative to inform the person under proceedings of his right to keep silent, than the contribution of the directive, regarding the effectivity of defence rights is rather poor.
Malta	Prosecution should inform the accused's lawyer immediately upon confirmation of time and date of arraignment.
Poland	No, I don't.
Portugal	No.
Romania	
Slovakia	
Slovenia	I believe that the right to meet and communicate with the defendant is very well implemented in Slovenian law and it's worth mentioning that a lawyer can meet his/her client in every phase of the criminal procedure (even when the defendant is in police custody), there are no time limits or specific days when a lawyer can meet with the defendant who is in jail or police custody. The state will also provide for a translator if the need arises, and the translator will accompany the lawyer on his visit in jail/police custody.
Spain	No good practise to share.
Sweden	See above mentioned practice.
The Netherlands	No.