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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT  
AND THE COUNCIL on the implementation of Directive 2010/64/EU of the  
European Parliament and of the Council of 20 October 2010 on the right to  
interpretation and translation in criminal proceedings

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Delegations will find attached document COM(2018) 857 final.

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EUROPEAN  
COMMISSION

Brussels, 18.12.2018  
COM(2018) 857 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the implementation of Directive 2010/64/EU of the European Parliament and of the  
Council of 20 October 2010 on the right to interpretation and translation in criminal  
proceedings**

# 1. INTRODUCTION

## 1.1. Background

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings<sup>1</sup> (‘the Directive’) constitutes the first instrument adopted under Article 82(2) of the Treaty on the Functioning of the European Union<sup>2</sup> (TFEU). Article 82(2) provides the legal basis to adopt, by means of directives, minimum rules on ‘the rights of individuals in criminal procedure.’

By providing common minimum standards for procedural rights in criminal proceedings, the Directive contributes to the general objective of increasing mutual trust by improving the application of the mutual recognition principle, the cornerstone of the EU area of freedom, security and justice. It helps to strengthen mutual trust by providing a more consistent implementation of some aspects of the right to a fair trial set out in Article 47 of the Charter of Fundamental Rights of the EU<sup>3</sup> and Article 6 of the European Convention on Human Rights.

The Directive is the first measure following the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted in 2009 (measure A)<sup>4</sup>. After the adoption of the Directive, further work on procedural rights has been carried out at EU level. To date, the EU has adopted five further directives on:

1. right to information about rights and charges and access to the case file<sup>5</sup>;
2. right of access to a lawyer and communication with third persons while being deprived of liberty<sup>6</sup>;
3. strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial<sup>7</sup>;
4. procedural safeguards for children<sup>8</sup>; and
5. legal aid<sup>9</sup>.

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1 OJ L 280, 26.10.2010, p. 1.

2 OJ C 326, 26.10.2012, p. 47.

3 OJ C 326, 26.10.2012, p. 392.

4 Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1.

5 Directive 2012/13/EU on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1.

6 Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1.

7 Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1.

8 Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1.

9 Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p. 1.

## 1.2. Purpose and main elements of the Directive

The Directive enables the practical application of the right to a fair trial which encompasses the right of suspected and accused persons to interpretation and translation in criminal proceedings<sup>10</sup>.

The Directive provides a general right to interpretation and translation in criminal proceedings, from the moment persons are made aware by the competent authorities that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings.

Article 2 sets the right to interpretation in criminal proceedings, requiring Member States to provide, without delay, an interpreter not only during criminal proceedings and European arrest warrant proceedings but also for communications between the suspected or accused person and their legal counsel.

Article 3 sets the right to translation during criminal proceedings and European arrest warrant proceedings, requiring Member States to provide within a reasonable period of time a written translation of documents that are essential for the exercise of the right of defence.

## 1.3. Scope of the report

The report evaluates the application of the Directive in accordance with Article 10 of the Directive which provides that the Commission must submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with the Directive.

The description and analysis in this report are primarily based on the information Member States provided to the Commission through the notification of national measures transposing the Directive. The report is also based on publicly available studies carried out by the European Union Agency for Fundamental Rights<sup>11</sup> or by external stakeholders assessing the implementation of procedural rights directives under the Justice Programme action grants<sup>12</sup>.

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10 The CJEU has so far interpreted Directive 2010/64/EU on three occasions. See CJEU, 15 October 2015, *Covaci*, C-216/14; CJEU, 9 June 2016, *Balogh*, C-25/15; CJEU, 12 October 2017, *Sleutjes*, C-278/16.

11 Study done by the European Union Agency for Fundamental Rights (FRA), *Rights of suspected and accused persons across the EU: translation, interpretation and information*, November 2016. Available at <http://fra.europa.eu/en/publication/2016/rights-suspected-and-accused-persons-across-eu-translation-interpretation-and>

12 See the study done by Council of Bars and Law Societies of Europe (ECCB), *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*, published in 2016. Available at <http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf>. See also "Inside Police Custody" and "Inside Police Custody 2", carried out by the Irish Council for Civil Liberties in 2014 and 2018. Available at: [https://intersentia.be/nl/pdf/viewer/download/id/9781780681863\\_0/](https://intersentia.be/nl/pdf/viewer/download/id/9781780681863_0/).

The report focuses on the measures Member States have taken so far to implement the Directive. It assesses whether Member States have implemented the Directive within the given timeframe, and whether national legislations achieve the objectives and fulfil the requirements of the Directive.

## 2. GENERAL ASSESSMENT

Under Article 9, Member States had to transpose the Directive into national law by 27 October 2013. At the date of expiry of the transposition period, 16 Member States had not communicated the necessary measures to the Commission: Belgium, Bulgaria, Ireland, Greece, Spain, Italy, Cyprus, Lithuania, Luxembourg, Hungary, Malta, Austria, Romania, Slovenia, Slovakia and Finland. As a result, the Commission decided on 29 November 2013 to launch infringement proceedings, under Article 258 TFEU, against those 16 Member States for non-communication or partial communication of transposing measures.

The Commission's main objective has been to ensure that all Member States transpose the requirements of the Directive in their national law, so that the rights it contains are protected throughout the European Union. The transposition of the Directive is a prerequisite to properly assess the extent to which the Member States have taken the necessary measures to comply with the Directive. The Commission started to assess the compliance of national measures with the Directive as soon as they were communicated by Member States. Delays in transposition<sup>13</sup> have postponed the overall assessment process. Some infringement proceedings for non-communication or partial communication could be closed only in 2018, following legislative amendments adopted by Member States<sup>14</sup>. In these circumstances, and given the complexity of the assessment of all the measures communicated by the 27 Member States bound by the Directive with particular regard to their different national legal systems, the Commission has not been in a position to submit this report earlier.

Although the Directive's impact is limited to setting minimum rules and consequently leaves the possibility for differences between national criminal procedural laws, it does impose clear obligations on Member States.

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13 For example, Luxembourg only transposed the Directive in March 2017 and Lithuania notified in May 2017 new measures to complete the transposition of the Directive.

14 The cases concerning Luxembourg and Lithuania were closed in January 2018.

The assessment has raised certain issues of compliance in several Member States, in particular for communication between suspected or accused persons and their legal counsel, the translation of essential documents and the costs of interpretation and translation. Unless remedied, such divergences may negatively affect the effectiveness of the rights provided for by this Directive. To ensure conformity with the Directive throughout the European Union, the Commission will take every appropriate measure, including where necessary initiating infringement proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

In accordance with Articles 1 and 2 of the Protocol (N°22) Denmark is not taking part in the adoption of the Directive and is not bound by it or subject to its application. Hence, Denmark is not considered in the following assessment.

In accordance with Article 3 of the Protocol (N°21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, the United Kingdom and Ireland have notified that they wish to take part in the adoption and application of the Directive.

### **3. SPECIFIC POINTS OF ASSESSMENT**

#### **3.1. Subject matter and scope (Article 1)**

Article 1 of the Directive lays down the subject matter and the scope of the Directive as that of ensuring the right to translation and interpretation in criminal proceedings for suspected or accused persons who do not speak or understand the language of the proceedings. The main aim of the Directive is to enable the application of these rights in practice in order to ensure the right to a fair trial. The right to interpretation and translation also applies to European arrest warrant proceedings.

##### **3.1.1. Scope — Article 1(2)**

Article 1(2) of the Directive provides that the application of the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant from the time a person is made aware by the competent authorities that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, that is, until the decision is final and irrevocable.

In most Member States, the moment and duration of application of the right to interpretation and translation is ensured by a general provision indicating the point in time where the right applies (e.g. ‘at any time during the criminal procedure’, ‘throughout the entire criminal proceedings’, ‘in the criminal proceedings’, ‘during the performance of procedural actions’). The moment and means of making the persons aware that they are suspected or accused of having committed a criminal offence are however in most Member States not explicitly mentioned in the transposing measures, but could be inferred from a detailed analysis of the different stages of criminal proceedings in the respective legal orders.

### **3.1.2. Minor offences — Article 1(3)**

Article 1(3) of the Directive ensures that when the national law provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, the right to interpretation and translation is granted for the appeal proceedings.

This provision is relevant for most Member States (16 Member States) where administrative authorities, the police or courts having jurisdiction in non-criminal matters are responsible for dealing with minor offences. For the remaining Member States, the provision does not apply because the imposition of sanctions on minor offences is always realised by courts having jurisdiction in criminal matters.

### **3.1.3. Article 1(4)**

Article 1(4) provides that the Directive does not affect national law concerning the presence of legal counsel at any stage of the criminal proceedings, nor does it affect national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

Only eight Member States have explicitly transposed this provision, whereas in the remaining Member States compliance can be concluded based on the analysis of national legislation already in place.

## **3.2. Right to interpretation (Article 2)**

Article 2 of the Directive provides the right to interpretation in criminal proceedings. It requires Member States to provide, without delay, an interpreter during criminal proceedings and European arrest warrant proceedings, including communications between the suspected or accused person and their legal counsel. Member States must also put a mechanism in place to assess whether the suspected or accused person understands the language of the proceedings. Also the possibility for challenging both the refusal of appointing an interpreter and the quality of the interpretation should be clearly laid down. Member States should also ensure that the interpretation provided is of sufficient quality to safeguard the fairness of the proceedings.

### **3.2.1. Interpretation before investigative and judicial authorities — Article 2(1)**

Article 2(1) obliges Member States to provide interpretation without delay to suspected or accused persons who do not speak or understand the language of the criminal proceedings before investigative and judicial authorities, including during police questioning, all courts hearing and any necessary interim hearings.

Most Member States ensure interpretation at all stages of criminal proceedings, encompassing both pre-trial and court stages through a general provision in their national law. Some Member States have introduced distinct provisions for each stage. However, on the requirement that interpretation must be granted to suspected and accused persons ‘without delay’, only 11 Member States explicitly set it out, affecting compliance with the Directive.

### **3.2.2. Interpretation for communication with legal counsel — Article 2(2)**

Article 2(2) provides the right to receive interpretation services 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.

Most Member States have explicitly introduced a provision into national law on the right to receive interpretation to communicate with legal counsel. However, in some Member States, this right is only referred to in legal practice, commentaries of national acts or case-law and provisions ensuring the general right to interpretation, affecting compliance with the Directive. In some other Member States, contrary to the Directive, this right is conditional to a specific request by the suspected or accused person, or alternatively by their legal counsel. In one Member State, criminal authorities first appoint the legal counsel as an interpreter if they know the language of the suspected or accused person, and only alternatively provide a qualified interpreter.

Most Member States have indicated which procedural acts are covered by the right to interpretation when communicating with legal counsel.

### **3.2.3. Assistance for persons with hearing or speech impediments — Article 2(3)**

Article 2(3) describes the right to interpretation as including appropriate assistance for persons with hearing or speech impediments.

Most Member States have limited the personal scope of this provision by referring only to ‘deaf or mute’, ‘deaf and hearing impaired’ or ‘deafblind’ persons. Such terminology appears too restrictive to encompass all hearing and speech impediments.



On the ‘appropriate assistance’ granted to this category of persons, 10 Member States make explicit reference to the services of a sign language interpreter, whereas seven Member States simply mention interpretation services in general. In 10 Member States, communication in writing is favoured in order to cover appropriate assistance. In a few Member States, appropriate assistance can be provided by persons familiar to the suspected or accused persons.

#### **3.2.4. Evaluation of the need for assistance — Article 2(4)**

Article 2(4) provides that Member States must set up a procedure or mechanism 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.

Most Member States lay down the obligation to assess the need for interpretation at every stage of the proceedings, but without setting up a specific mechanism for that purpose. Only two Member States have set up a specific mechanism.

#### **3.2.5. Right to challenge and complain — Article 2(5)**

Article 2(5) requires Member States to ensure that suspected or accused persons have both the right to challenge a decision finding that there is no need for interpretation and the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

On the right to challenge a decision finding that there is no need for interpretation, only 10 Member States have introduced procedures in their legislation addressing this review procedure. The remaining Member States have relied on existing general procedures for appealing against decisions of investigating and court authorities and submitting complaints or objections during the course of the criminal proceedings.

On the possibility to complain about the quality of interpretation, 15 Member States referred to such a complaint procedure. For the remaining Member States, recourse was made to general procedures of submitting complaints and objections or even appeals due to violation of the procedural rights of defence. The possibility to replace an interpreter on grounds of insufficient quality of interpretation services is provided in most Member States.

#### **3.2.6. Communication technology — Article 2(6)**

Article 2(6) allows Member States where appropriate to use communication technology such as videoconferencing, telephone or the internet, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

Half of the Member States chose to adopt this possibility. Among those, 12 Member States have referred to the limitation under Article 2(6) of the Directive. Two Member States mention that the use of communication technology should not hinder the rights of defence of the suspected or accused person.

### **3.2.7. Interpretation in European arrest warrant proceedings — Article 2(7)**

Article 2(7) requires that Member States ensure interpretation is provided also in proceedings for the execution of a European arrest warrant. Almost all Member States, with the exception of one, have correctly transposed this provision.

### **3.2.8. Quality of interpretation — Article 2(8)**

Article 2(8) requires interpretation to 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. Almost all Member States have transposed this provision although the majority of Member States do not explicitly refer to the quality of interpretation. Among those, 16 Member States require that interpreters participating in the proceedings are registered or sworn interpreters or have been included in lists made available to the criminal authorities following compliance with a set of quality criteria.

## **3.3. Right to translation of essential documents (Article 3)**

Article 3 of the Directive establishes the right to translation during criminal proceedings and European arrest warrant proceedings, requiring Member States to provide within a reasonable period of time a written translation of documents that are essential for the exercise of the right of defence. This right includes the possibility to challenge both the refusal of granting translation and the quality of the translation. As an exception, an oral translation and a waiver of the right to translation are allowed under strict conditions. Member States should also ensure the quality of translation services.

### **3.3.1. Translation of essential documents — Article 3(1)**

Article 3(1) provides that suspected or accused persons who do not understand the language of the criminal proceedings should, within a reasonable period of time, be provided with a written translation of all documents that are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings<sup>15</sup>.

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<sup>15</sup> In case C-278/16, *Sleutjes*, the Court has judged that ‘an order provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a ‘document which is essential’, within the meaning of Article 3(1) of that directive’ (point 34), as ‘it represents both an indictment and a judgment within the meaning of Article 3(2) of Directive 2010/64’ (point 31).

Most Member States, with the exception of one Member State, provide for the written translation of essential documents. The majority of Member States either explicitly require that translations are provided ‘within a reasonable period of time’, or use a similar language such as ‘promptly’, ‘as soon as possible’ or ‘as soon as practicable’. In eight Member States, the national legislation does not state that translation of essential documents will be provided within a reasonable period of time, affecting compliance with the Directive.

### **3.3.2. Definition of essential documents — Article 3(2)**

Article 3(2) provides that essential documents must include any decision depriving a person of their liberty, any charge or indictment and any judgment.

Most Member States have listed the documents that must be considered essential under this provision, although without necessarily using the term ‘essential documents’. The list of documents to be translated is in most cases indicative and allows for the translation of additional documents other than those for which it is compulsory.

In a few Member States, compliance is not ensured as the list of documents to be translated does not refer to all documents listed in the Directive (e.g. only parts of the indictment are to be translated, or not all documents on measures of deprivation of liberty are translated).

### **3.3.3. Decision on the essential character of a document — Article 3(3)**

Article 3(3) provides that the competent authorities must decide on a case-by-case basis whether any other document is essential and that the suspected, the accused persons or their legal counsel may submit a reasoned request to that effect.

Most Member States allow requesting the translation of additional documents essential for the suspected or accused person. However, six Member States do not allow suspected or accused persons or their legal counsel to submit a reasoned request for the translation of an additional document. About half of Member States refer to some general criteria for determining the essential character of documents (e.g. when they are necessary for the exercise of the right of defence or when this is in the interests of justice in general).

### **3.3.4. No requirement to translate irrelevant passages of essential documents — Article 3(4)**

Article 3(4) provides that there must be no requirement to translate passages of essential documents that are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

Most Member States have made use of this optional provision. In national legislation, the reasons justifying not translating passages vary, from not being relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them to not being relevant for the exercise of the right to defence.

A few Member States go beyond this minimum standard by providing that essential documents must always be translated in full and not only the relevant passages.

### **3.3.5. Right to challenge and complain — Article 3(5)**

Article 3(5) requires Member States to ensure that suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages and the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

On the right to challenge a decision finding that there is no need for translation of documents, only eight Member States (as for Article 2(5)) have introduced specific procedures in their legislation addressing this review procedure. The remaining Member States have relied on existing general procedures for appealing against decisions of investigating and court authorities and submitting complaints or objections throughout the course of the criminal proceedings.

On the possibility to complain about the quality of translation, less than half of Member States made explicit reference to a specific complaint procedure. The remaining Member States refer to general procedures for submitting complaints and objections or even appeals based on the violation of the procedural rights of defence.

While the Directive did not provide for this, six Member States have gone further and provide the possibility of replacing the translator on grounds that the translations produced were of insufficient quality.

### **3.3.6. Translation of European arrest warrant — Article 3(6)**

Article 3(6) requires that a translation of the European arrest warrant is provided in the context of these proceedings.

Almost all Member States, with the exception of four, have correctly transposed this provision. Among those Member States, most explicitly provide for the right to a translation of the European arrest warrant.

### **3.3.7. Oral translation or oral summary of essential documents — Article 3(7)**

Article 3(7) provides an exception where an oral translation or oral summary of essential documents may be provided instead of a written translation on the condition that the oral translation or oral summary does not prejudice the fairness of the proceedings.

Almost all Member States have chosen to include this exception in their national law. Only two Member States where translation of essential documents is always provided have not transposed this exception .

Among the Member States that have transposed this option, six specify that an oral translation or oral summary will be provided where this does not prejudice the fairness of the proceedings. Some other Member States do not mention that oral translations are an exception to written translations and it is sometimes unclear in practice whether this is the case, as it seems that oral translations may be the rule.

### **3.3.8. Waiver of the right to translation — Article 3(8)**

Article 3(8) allows for a waiver of the right to translation of documents, provided that suspected and accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and provided that the waiver was unequivocal and given voluntarily.

Most Member States have transposed this option. Of those, all have included the requirement that the suspected or accused person must have obtained full knowledge of the consequences of such waiver, either by employing a similar vocabulary or by entrusting the information obligation to the criminal authorities. However, very few Member States have explicitly mentioned that the waiver must be unequivocal and given voluntarily.

Ten Member States go beyond the minimum set by this provision and do not provide the possibility to waive the right to translation of essential documents in criminal proceedings.

### **3.3.9. Quality of translation — Article 3(9)**

Article 3(9) requires that translations are 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.

Most Member States, although they do not explicitly refer to the quality of translation, provide for sufficient quality of translation either by requiring that translators participating in the proceedings are registered or sworn translators or have been included in relevant lists made available to the criminal authorities following compliance with a set of quality criteria. Only two Member States have not transposed this provision.

## **3.4. Costs of interpretation and translation (Article 4)**

Article 4 requires Member States to bear the costs of interpretation and translation in criminal proceedings irrespective of the outcome of the proceedings.

Almost all Member States, except three, have transposed correctly this obligation. In most Member States, the requirement to cover the costs of interpretation and translation ‘irrespective of the outcome of the proceedings’ has been implied from other national provisions ensuring that the right to interpretation and translation applies to the pre-trial and trial phase and that the related costs are not borne by the suspected or accused person. Some Member States provide that the costs of interpretation and translation in criminal proceedings are borne by the State. Some other Member States provide that the costs are borne by specific authorities (e.g. pre-trial authorities at the pre-trial stage and courts at the court stage).

### **3.5. Quality of the interpretation and translation (Article 5)**

Article 5 lays down the obligation for Member States to take measures to ensure the quality of interpretation and translation. In addition, Member States must endeavour to keep registers with the interpreters and translators and make them available to legal counsel and relevant authorities.

#### **3.5.1. Concrete measures to ensure quality — Article 5(1)**

Article 5(1) provides that Member States must take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9) of the Directive.

As already mentioned above, the majority of Member States have introduced measures to ensure the quality of interpretation and translation mostly through provisions regulating the profession of interpreters and translators and through specific qualification requirements.

Some Member States have taken specific measures going beyond the provisions of the Directive to ensure sufficient quality of interpretation and translation, by regulating the profession of interpreters and translators or by referring to principles of conduct or ethical requirements of interpreters and translators.

#### **3.5.2. Registers of translators and interpreters — Article 5(2)**

Article 5(2) requires that Member States must endeavour to establish a register or registers of independent translators and interpreters, who are appropriately qualified.

Although this Article does not require Member States to establish a register, most Member States have a register or registers for interpreters and translators and only a few have not yet taken any steps in that direction. Six Member States provide that, in exceptional situations, which are mostly linked to the unavailability of an interpreter/translator, the lack of an interpreter/translator for a specific language or disproportionate costs, interpreters/translators who are not included in official registers or lists can be summoned to participate in the proceedings.

### **3.5.3. Confidentiality — Article 5(3)**

Article 5(3) provides that Member States must ensure that interpreters and translators respect confidentiality in carrying out their role.

Most Member States provide for a specific confidentiality requirement for interpreters and translators applicable to the criminal proceedings, whereas a few Member States have a more general obligation of confidentiality. Two Member States have not transposed this obligation since they have not placed a confidentiality obligation upon interpreters and translators, contrary to the Directive.

### **3.6. Training (Article 6)**

Article 6 provides that Member States must request those responsible for training judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

Overall, this provision has not been explicitly transposed by the majority of Member States. However, their national systems generally include soft-law measures ensuring training programmes for judicial staff. In several Member States, training for judges, prosecutors and judicial staff include specific elements on the particularities of communicating with the assistance of an interpreter.

### **3.7. Record-keeping (Article 7)**

Article 7 of the Directive lays down a record-keeping obligation for Member States when an interpreter is present during questioning and hearings, when an oral translation or oral summary of essential documents has been provided and when a waiver of the right to translation has been used by the suspected or accused person.

The obligation to keep a record has been accurately transposed in most Member States. In those Member States, the obligation to keep a record of the assistance of an interpreter during the questioning or hearings by an investigative or judicial authority and of the use of oral translation or oral summary of essential documents is set.

The obligation to keep record of the use of a waiver to the right to translation is also provided for in most cases. For seven Member States, the record-keeping obligation can be inferred from general provisions on the duty to keep a detailed record or minutes of all actions in relation to all stages of criminal proceedings. One Member State does not provide for the specific obligation to record the presence of an interpreter or the fact that oral translation has been provided.

On the competence to keep records, in the majority of the Member States, the investigative authorities are responsible for keeping them in the pre-trial phase, while in the court proceedings, it is a duty of the court - the court registrar usually carries out this role.

#### 4. CONCLUSIONS

The Directive was introduced to enable the application of a specific fair trial right, namely the right of suspected or accused persons to translation and interpretation in criminal proceedings and European arrest warrant proceedings.

The Directive has a significant impact on the protection of suspected or accused persons in Member States by providing a more consistent implementation of the rights and guarantees set out in Articles 47 and 48 of the Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights through the establishment common European minimum standards. In this way, the Directive contributes to improving mutual trust among Member States as foreseen by the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings.

Overall, the Directive has provided EU added value by raising the level of protection of citizens involved in criminal proceedings, especially in some Member States where the right to translation and interpretation did not exist beforehand.

The extent of the Directive's impact on Member States varies according to the national criminal justice systems in place. The evaluation highlights that there are still difficulties on key provisions of the Directive in some Member States. This is particularly the case for communication between suspected or accused persons and their legal counsel, the translation of essential documents and the costs of interpretation and translation.

The evaluation also shows that there is currently no need to revise the Directive but that its application can be further improved in practice. The Commission will continue to assess Member States' compliance with the Directive and will take every appropriate measure to ensure conformity with its provisions throughout the European Union.