

European arrest warrant defence toolkit

The right to interpretation and
translation

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This document is possible thanks to the financial support of the Justice Programme of the European Union. The contents of this document are the sole responsibility of the author and can in no way be taken to reflect the views of the European Union

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Contents

Introduction	4
The right to interpretation	5
Scope and content	5
Modalities of exercise	6
Assessment of interpretation needs	
Costs of interpretation services	
Quality of interpretation services	
What to do?	10
The right to translation of essential documents	11
Scope and content	11
What to do?	13
Useful sources	13

Introduction

A language barrier can be a significant obstacle to the effective exercise of procedural rights in European arrest warrant (EAW) proceedings, which can put requested persons in a situation of vulnerability before law enforcement authorities.¹ Due to the cross-border nature of such proceedings, requested persons will most probably not speak or understand the language of proceedings and likely neither the language their lawyer speaks. This means that without the assistance of a qualified interpreter or translator, requested persons cannot fully understand their rights, communicate with their lawyer or understand the case materials or what is being said during court hearings. It also makes it extremely difficult for them to participate effectively in the hearing before the executing judicial authority, which may result in their surrender to another Member State and potentially, to a prolonged deprivation of liberty. As such, it is crucial that the requested person has full access to adequate interpretation and translation services for any other legal safeguards and defence rights in the EAW to be effective.

The right to interpretation was already envisaged at the adoption of the Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (FD EAW). It was later restated and expanded with the adoption of the Directive 2010/64 on the right to interpretation and translation in criminal proceedings (Directive 2010/64).²

However, in practice, there are still many obstacles to accessing interpretation and translation services, both in national and cross-border proceedings. The challenges that arise in the context of EAW proceedings are similar to those that emerge in national proceedings. However, their cross-border nature makes it almost certain that the requested person will need interpretation services and therefore, makes the shortcomings even more problematic.

One of the major obstacles in accessing interpretation services is the lack of qualified interpreters. People who speak a certain language but are not qualified interpreters often serve as interpreters in EAW proceedings, which involve explaining highly complex legal terms and rights that cover two Member States. There is also a general lack of training for interpreters that are qualified but not specialised in criminal proceedings or EAW proceedings specifically. This results in poor quality of interpretation services which, if not properly detected and rectified, can have a detrimental effect on the effective exercise of requested persons' rights.

This section of the European arrest warrant defence toolkit covers the legal sources, content and scope of the right to interpretation and translation in EAW proceedings, identifies their main implementation challenges and provides practical advice for lawyers to ensure that the right to interpretation and translation is effectively safeguarded in EAW proceedings.

¹ ECtHR, [Wang v. France](#), App. No. 83700/17, 28 April 2022, §72; [Baytar v. Turkey](#), App. No. 45440/04, 14 October 2014, §187; [Knox v. Italy](#), App. No. 76577/13, 24 January 2019, §55.

² 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 (OJ L 280, 26.10.2010, p. 1–7).

For a complete understanding of how to use Directive 2010/64 on the right to interpretation and translation, this section should be read in combination with Fair Trials' toolkit on the interpretation and translation directive which you can access by **clicking here**.

Use this chapter of the defence toolkit together with other chapters on: access to a lawyer and legal aid, the right to information and translation, and access to case file. **Click here to find them all on the Fair Trials website.**

As part of this project, Fair Trials produced an accompanying film for each chapter, **click here to watch them on YouTube.**

The right to interpretation

Scope and content

Since 2002, the FD EAW includes the right for requested persons to be assisted by an interpreter in the executing Member State. According to Article 11(2):

"A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted (...) by an interpreter in accordance with the national law of the executing Member State".

Article 2 of Directive 2010/64 generally provides for the following rights:

- **Interpretation before investigative and judicial authorities.** Article 2(1) obliges Member States to ensure that suspected or accused persons who do not understand the language of the criminal proceedings 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.
- **Interpretation for communications with lawyers.** Article 2(2) provides that, where it is necessary to ensure the fairness of proceedings, Member States must make sure that interpretation services are available for communications between suspected or accused persons and their lawyers, in relation with any questioning or hearing or the lodging of an appeal or any other procedural application. This is very important in EAW proceedings, where the requested person may be a national of another Member State who probably does not speak the same language as their lawyer. Recital 19 of Directive 2010/64 establishes that such services should enable suspected or accused persons to, inter alia, explain their version of the events to their

lawyer, point out any statements with which they disagree and ensure that their lawyer is aware of any facts that should be put forward in their defence.

Article 2(7) of Directive 2010/64 requires Member States to ensure such interpretation is provided also in proceedings for the execution of European Arrest Warrants:

“The executing Member State shall ensure that its competent authorities provide persons subject to such proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article [Article 2].”³

Because EU law standards cannot fall below the European Convention on Human Rights (ECHR) standards,⁴ Directive 2010/64 must be interpreted in the light of the jurisprudence of the European Court of Human Rights (ECtHR) in relation to the right to interpretation.

To some extent, the right to interpretation under the EU law overlaps with ECHR standards, which may make it seem redundant to invoke EU procedural rights when similar protections are already guaranteed by the ECHR.

However, in many areas, EU law sets out rights in more detail and guarantees higher standards, thereby enhancing their protection. Although the right to interpretation and translation is also enshrined in Article 6(3)(e) of the ECHR,⁵ the scope of Article 2 of Directive 2010/64 is broader, extending the right to interpretation to cover not only the requested person’s communication with the authorities of the executing State, including the court, but also communications between the requested person and their lawyers.⁶

It makes it more strategic to use for defence lawyers, especially in the context of EAW proceedings where interpretation of such communications will in most cases be needed.

Modalities of exercise

Assessment of interpretation needs

When a suspected or accused person finds themselves facing investigative or judicial authorities, a series of elements must be assessed: what language do they actually speak? Do they understand the language of the proceedings

³ Directive 2010/64 on the right to interpretation and translation, Article 2(7).

⁴ Directive 2010/64 on the right to interpretation and translation, Article 8; Charter, Article 53.

⁵ “Everyone charged with a criminal offence has the following minimum rights: (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court”.

⁶ Nevertheless, the European Court of Human Rights (ECtHR) recognised that although Article 6(3)(e) does not cover the relations between the accused and his counsel but only applies to the relations between the accused and the judge (*X. v. Austria*, Commission decision) the impossibility of an applicant to communicate with his or her lawyer due to linguistic limitations may give rise to an issue under Article 6(3) (c) and (e) of the ECHR (ECtHR, *Lagerblom v. Sweden*, App. No. 26891/95, 14 January 2003, §§ 61 – 64; *Pugžlys v. Poland*, App. No. 446/10, 14 June 2016, §§ 85–92).

to the extent required in that specific context? Without interpretation services, would the person really be able to exercise their right of defence?

The same assessment applies to requested persons in EAW proceedings and is even more important as there is an even greater chance that the person will not speak the language of the proceedings.

However, in the vast majority of Member States, the need for interpretation is assessed by asking the person questions or even just the question, 'do you understand language X?'⁷

Without a formalised procedure and clear criteria to assess interpretation needs, authorities are not in a position to meet interpretation needs in a satisfactory manner. This is why Article 2(4) provides that:

"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."

It is not sufficient for the person to approximately understand or speak the language of the proceedings. Pursuant to Recitals 17 and 22 of Directive 2010/64, the level of understanding must be determined in light of the person's ability to 'fully' exercise their defence rights and to safeguard the fairness of the proceedings. This must be examined considering the specifics of the case, and in particular the complexity of the case and of the communications addressed to the person.⁸

Authorities are required to provide the reasons upon which they decided not to provide interpretation.⁹ It is therefore for the authorities to prove that the person did sufficiently speak and understand the language of proceedings, and not for the person to prove they did not. Moreover, Member States are under an obligation to create a formal complaint mechanism to challenge a decision finding that there is no need for interpretation.¹⁰ Where necessary, you should use this mechanism if it exists and, if not, raise the issue before the executing judicial authority.

For more practical suggestions, see ***What to do?*** on page 10.

⁷ European Union Agency for Fundamental Rights (FRA), [Rights of suspected and accused persons across the EU: translation, interpretation and information](#), 2016, n°11, p.32.

⁸ ECtHR, [Hermi v. Italy](#), App. No. 18114/02, 18 October 2006, §71; [Katritsch v. France](#) App. No. 22575/08, 4 November 2011, §43; [Şaman v. Turkey](#), App. No. 35292/05, 5 April 2011, §30; [Amer v. Turkey](#), App. No. 25720/02, 13 January 2009, §78.

⁹ ECtHR, [Diallo v. Sweden](#), App. No. 13205/07, 5 January 2010, §§24-25; [Şaman v. Turkey](#), op.cit., §30; [Baytar v. Turkey](#), op.cit., §§50 ff.; [Knox v. Italy](#), op.cit., §183.

¹⁰ Directive 2010/64 on the right to interpretation and translation, Article 2(5).

Costs of interpretation services

Article 4 of Directive 2010/64 establishes the right to interpretation and translation free of charge:

“Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.”

For EAW proceedings, Recital 15 clarifies that executing Member States should provide and bear the costs of interpretation and translation for the benefit of requested persons who do not speak or understand the language of proceedings.

According to the ECHR jurisprudence, the obligation to provide free assistance does not depend on whether the accused has means to pay for interpretation services. Instead, interpretation services for suspected and accused persons are regarded as a part of the facilities that States Parties are required to put in place when organising their criminal justice systems.¹¹

Moreover, the costs of interpretation cannot be subsequently claimed back from accused persons in case of conviction, as this would amount to limiting in time the benefit of the Article 6(3)(e).¹²

In the EAW context, this would mean that the executing Member State must cover the costs of an interpreter’s assistance whether or not the requested person has the means to pay for interpretation services and whether or not the requested person is ultimately surrendered.

Quality of interpretation services

For the right to interpretation to be effectively guaranteed, it is not enough to merely have an interpreter appointed and present in the room. The quality of interpretation services should be sufficient to enable effective communication and allow requested persons to effectively exercise their rights and participate in the proceedings against them.

In that regard, the ECtHR has stated that:

“The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events.”¹³

“(…) it has not been established in the present case that the applicant received language assistance such as to allow him to participate actively in

¹¹ ECtHR, *Fedele v. Germany*, App. no. 11311/84 (Commission decision of 9 December 1987).

¹² ECtHR, *Belkacem and Koç v. Germany*, App. No. 6210/73, 6877/75, 7132/75, 28 November 1978, §§ 42 and 46; ECtHR, *Öztürk v. Germany*, App. No. 8544/79, 21 February 1984, § 58; *Işyar v. Bulgaria*, App. no. 391/03, Judgment of 20 November 2008, 45

¹³ ECtHR, *Kamasinski v. Austria*, App. No. 9783/82, 19 December 1989, §74; *Hermi v. Italy*, op.cit., §70; *Protopapa v. Turkey*, App. No. 16084/90, 24 February 2009, §80; *Vizgirda v. Slovenia*, App. No. 59868/08, 28 August 2018, §79.

the trial against him. This, in the Court's view, is sufficient to render the trial as a whole unfair.”¹⁴

Directive 2010/64 mirrors ECtHR case-law and requires the services to be of such quality that the fairness of the proceedings is safeguarded. Specifically, Article 2(8) of Directive 2010/64 provides that the interpretation services provided must:

“(…) 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”.

However, in some Member States, police and courts may simply call any person who is believed to speak the required foreign language. Moreover, when interpreters are unavailable or when a person speaks a less common language, it is common practice that interpretation is provided in a third language, which can have the same effect as poor quality interpretation or no interpretation at all.¹⁵

Digital solutions could be very beneficial in situations where certified/qualified interpreters are not available in the area (or even in the country), especially as Article 2(6) of Directive 2010/64 provides that where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

To ensure the quality of interpretation, Article 5(2) of Directive 2010/64 suggests that Member States establish a register or registers of independent translators and interpreters who are appropriately qualified. If such registers are established, they must be made available to legal counsel and relevant authorities.

In practice, in many Member States such registers do not exist, and interpreters used in criminal proceedings and EAW proceedings lack the necessary qualifications. There are also no mechanisms established to verify the quality of interpretation services, therefore it often falls on lawyers to make sure the requested person understands what is being said.

As a lawyer, although it may be difficult to identify interpretation issues unless you happen to speak the said language, you should bring it to the attention of the executing state's authorities if there are any doubts as to the quality or accuracy of interpretation services provided.

Indeed, Member States are required by Article 2(5) of Directive 2010/64 to ensure that suspected or accused persons have the right to complain about the quality of interpretation when it was not sufficient to safeguard

¹⁴ ECtHR, *Kamasinski v. Austria*, op.cit., §102.

¹⁵ 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, 18 December 2018 ('Implementation Report'); Fair Trials, *Where's my lawyer: Making legal assistance in pre-trial detention effective*, 2019, p. 23; FRA, *Rights in practice – access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings*, p.68.

the fairness of the proceedings. Where necessary, you could try to use national formal complaint mechanisms if they exist and, if not, raise the issue of poor-quality interpretation before the executing judicial authority.

In that regard, a positive example is provided by the High Court of Ireland, which recently issued a decision regarding the role of the trial judge in assessing allegations of inadequate translation services provided to an accused person at the investigative stage and the effect on the fairness of the subsequent trial if the services are found to be inadequate. The High Court stated that the right of the trial court to retrospectively assess the quality of interpretation was necessarily implied in Directive 2010/64 “because the right under the 2010 Directive to adequate interpretation is for the purpose of safeguarding the fairness of the proceedings” and “in order to ensure the fairness of a trial, a trial court must be in a position to provide an adequate remedy where such a breach has occurred”. The High Court also noted that “it may often take the form of the court refusing to admit evidence because it has been taken in violation of an accused person’s rights.”¹⁶

What to do?

Lawyers can play an important role in ensuring requested persons can effectively exercise their right to interpretation. Article 2(5) of Directive 2010/64 specifically provides for a right to submit complaints in case of “*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.*”

Therefore, if you suspect that your client does not speak or understand the language of the proceedings in a manner that enables them to fully exercise their rights of defence, you should:

- Assess the requested person’s ability to speak and understand the language of the proceedings by discussing their case and asking questions. If it appears that the person does not sufficiently speak or understand the language:
 - Request the authorities to assess the interpretation needs of the person.
 - Argue that interpretation is needed because the person’s level of understanding and speaking is not sufficient to enable them to exercise their rights of defence, for example because they cannot understand the questions asked or present their version of events.
 - Ensure the request is recorded in the court/police records.
 - Request the authorities to give the reasons why, in their opinion, interpretation is not needed, and ensure these reasons are recorded in the court/police records.

¹⁶ The High Court in the matter of S.52 of the Courts supplementary Act 1961 between [the DPP and Darius Savickis](#), 16 July 2019.

- As provided for by Article 2(5) of Directive 2010/64, challenge any decision finding that there is no need for interpretation.
- When you and your client in the EAW proceedings do not speak the same language, request for an interpreter to be appointed for your communications.
- When interpretation services are provided, identify potential issues regarding the quality of interpretation, by:
 - asking the interpreter if they speak the same dialect as the client or only a similar third language;
 - checking the interpreter’s qualifications;
 - paying attention to your client’s reactions to the interpretation;
 - checking whether the interpreter takes time before translating the statements, searches for words etc.;
 - paying attention to whether the interpreter provides simple answers when the requested person has provided a longer answer or spoken for a longer period;
 - paying attention to whether the interpreter asks to see documents shown or commented on.

Where the interpreter does not appear to be qualified for your client’s language needs or for the EAW proceedings in general, request that another interpreter be appointed.

On a policy level, lawyers can also play a significant role in advancing the law and putting mechanisms in place that allow for an effective exercise of the rights in practice. Local Bar Associations and other similar organisations can use the different platforms available to them to advocate for a more effective protection of defendants’ rights, for example by pushing for the establishment of a registry of qualified interpreters, for the establishment of formal mechanisms to assess interpretation needs and the quality of interpretation services, etc.

The right to translation of essential documents¹⁷

Scope and content

If suspected or accused persons do not know the language of the proceedings, they need to be able to review case materials in their own language. This is, again, essential in cross-border proceedings.

¹⁷ As this issue is also related to the right to access the casefile, this section should be read in combination with Fair Trial’s [toolkit on the right to information directive](#).

Quality translation of the documents of the case is necessary to ensure that requested persons can exercise their rights of defence, especially the right to be heard on the execution of the EAW, including on the legality of the EAW and its compatibility with the requirements of the FD EAW. The right to translation is also essential to enable lawyers to fulfil their role effectively, especially in the executing Member State.

In the context of EAW proceedings, Article 3(6) of Directive 2010/64 only provides that the executing Member State must ensure that its competent authorities provide requested persons with a written translation of the EAW form, without reference to any other document of the proceedings.

For national proceedings, Article 3(1) of Directive 2010/64 guarantees the right to translation of all documents that are *“essential to ensure that they [suspected or accused persons] are able to exercise their right of defence and to safeguard the fairness of the proceedings.”*¹⁸ Although that right is not expressly extended by Directive 2010/64 to EAW proceedings, we do not see any reason why it should not equally apply to requested persons, who should also be enabled to exercise their right of defence in the EAW proceedings.

For example, in domestic proceedings taking place in Italy, a criminal defence lawyer from our Legal Experts Advisory Panel made the argument that in the specific circumstances of the case, it was essential for the defence to obtain a translation of the whole case file. In that case, German rescue workers from a non-governmental organisation were charged in Italy with “collaborating with people smugglers” after their organisation conducted rescue missions by ship to save people from drowning in the Mediterranean Sea. In order to advise the accused, who did not speak Italian, the defence considered it was essential to obtain a German translation of the 25,000-page case file. Arguing that it is a right guaranteed under EU law, the defence filed a request for the translation of the entire case file. However, the request was denied by the Public Prosecutor because the Italian Code of Criminal proceedings did not provide sufficient grounds for such request. Relying on the principle of direct effect of EU law, the defence used Article 3 of Directive 2010/64 to challenge the prosecutor’s decision before an investigative judge, arguing that translations were necessary to ensure an effective defence and the suspects’ informed participation in the proceedings. The preliminary investigation judge granted the request in part and ordered the translation of some of the requested documents. The judge relied on the Italian Code of Criminal proceedings and stated that it prescribes the discretion of a judge to order, upon request of a party, free translation of the documents that are essential for the suspect to understand the charges against them. Further, the judge explained that the law entrusts the judge with the task of identifying and assessing which documents in the case file are deemed essential.

As a lawyer in EAW proceedings, you could try to request the translation of other documents you deem necessary by arguing that, in the specific circumstances of the case, these are essential for the requested person to exercise their right of defence and to safeguard the fairness of the proceedings.

¹⁸ For more information as to the definition of “essential documents”, see Fair Trial’s [toolkit on the interpretation and translation directive](#), pp.64-67.

What to do?

When the case materials that are essential for the requested person in EAW proceedings to exercise their rights of defence are in a language they (or you as their lawyer) do not understand, you should:

- Identify the essential documents that need to be translated;
- Request the full translation of the documents and explain why the latter is essential;
- Challenge any decision finding that there is no need for the translation of the document you consider essential for the effective defence of your client in the EAW proceedings.

Useful sources

EU law sources

- [Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States \(2002/584/JHA\)](#). Available in all EU languages.
- [Charter of Fundamental Rights of the European Union](#). Available in all languages.
- [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](#). Available in all EU languages.

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- Fair Trials, [Toolkit on the Right to Information Directive](#), 2020.
- Fair Trials, [Toolkit on the Legal Aid Directive](#), 2020.
- Fair Trials, [Toolkit on the Presumption of Innocence Directive](#), 2020.
- Fair Trials, [Toolkit on the Charter of Fundamental Rights of the European Union](#), 2020.
- Fair Trials, [CJEU Preliminary Reference Toolkit](#), 2020.

- EUROJUST website, [section European Arrest Warrant](#).

Guides on application of EU law

- [Handbook on how to issue and execute a European Arrest Warrant](#), European Commission, October 2017. Available in 21 languages.
- [Handbook on the transfer of sentenced persons and custodial sentences in the European Union](#), European Commission, November 2019. Available in 23 languages.

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- [CJEU Case-law Analysis Repository](#), STREAM Project, 2022.
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- [Guide on Article 6 of ECHR: Right to a fair trial \(criminal limb\)](#), Registry of the European Court of Human Rights, regularly updated. Available

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