

Our vision:

A world where every person's right to a fair trial is respected.

The Quality of Interpretation in Criminal Proceedings

LEAP Survey Report

March 2016

Leap

Legal Experts
Advisory Panel

About LEAP

The Legal Experts Advisory Panel (“LEAP”) is a pan-EU network of criminal justice and human rights experts, currently bringing together over 150 defence practitioners, NGOs and academics from 28 EU Member States. LEAP is guided by its Advisory Board, consisting of 28 Members from 26 Member States.

LEAP meets regularly to discuss criminal justice issues, identify common concerns, share examples of best practice and identify priorities for reform of law and practice. In March 2014, in its report *Stockholm’s Sunset*, LEAP set out its priorities for future work by the EU to make fair trial rights a reality in Europe, and it has been working to promote those priorities during the last two years. These included (i) making a contribution to the effective implementation, and (ii) informing the development of new EU laws in this area. LEAP is not a single voice and does not require formal sign-up to positions; it acts as a forum for the exchange of expertise from which common concerns and positions emerge, which can be reflected in published LEAP materials.

About Fair Trials

Fair Trials works for fair trials in Europe according to internationally recognised standards of justice. Our vision is a world where every person’s right to a fair trial is respected. Fair Trials helps people to understand and defend their fair trial rights; addresses the root causes of injustice through its legal and policy work; and undertakes targeted training and networking activities to support lawyers and other human rights defenders in their work to protect fair trial rights.

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I. Introduction

1. Having participated actively in the negotiations which led to the adoption of the first three directives adopted under the 2009 Roadmap for strengthening procedural rights in criminal proceedings (the “**Roadmap Directives**”),¹ in March 2014, LEAP committed to supporting their effective implementation.² To further this aim, LEAP adopted an implementation strategy in February 2015 which defines the implementation activities in which it will engage (the “**Implementation Strategy**”).³
2. The Implementation Strategy focuses on the provision of training and litigation support, but also emphasises the need for cooperation with national governments and legislative bodies responsible for implementation. Further, LEAP hopes to support the European Commission in its monitoring and enforcement of the Roadmap Directives. Building on this plan, LEAP has continued to work on issues related to the adequate and correct implementation of the Roadmap Directives which have been adopted to date.⁴
3. A major challenge identified at meetings of the LEAP network with regards to the implementation of the Directive on the right to interpretation and translation in criminal proceedings⁵ (“the Directive”) relates to the failure by many Member States adequately to implement the obligations relating to the quality of interpretation (which should have been fully transposed by 27th October 2013). The quality obligations in the Directive underpin the safeguards which it provides to non-national suspects and accused persons facing criminal proceedings in a Member State whose language they do not speak. LEAP has highlighted time and again the many ways that the ability of an individual to exercise the full range of defence rights, and particularly the right to not self-incriminate, is compromised when they are unable to communicate effectively with their lawyer, the investigating authorities, and even the court.
4. In 2013, Fair Trials held a series of six meetings with 56 defence lawyers from 25 Member States to discuss the situation of defence rights falling within the scope of the Roadmap Directives,

¹ Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, 20 October 2010, available at: <http://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32010L0064&from=EN>; Directive 2012/13/EU of the European Parliament and the Council on the right to information in criminal proceedings, 22 May 2012, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>; Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings, 22 October 2013, available at: <http://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32013L0048&from=EN>.

² For details see: Fair Trials and LEAP, Report Stockholm Sunset, March 2014, available at: <https://www.fairtrials.org/wp-content/uploads/Stockholms-Sunset.pdf>.

³ Fair Trials, March 2015, available at: <http://www.fairtrials.org/wp-content/uploads/5A-IMPLEMENTATION-MOVEMENT-PAPER.pdf>

⁴ Further details of LEAP’s work on implementation can be found in the recent report by LEAP and Fair Trials, The Road Ahead, March 2016, available at: <https://www.fairtrials.org/wp-content/uploads/Defence-Rights-in-the-EU-full-report.pdf?platform=hootsuite>.

⁵ Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, 20 October 2010, available at: <http://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32010L0064&from=EN>.

under a series entitled “Advancing Defence Rights”, and identified the following main problems with regards to interpretation:

- (i) the inadequacy of the process by which the interpretation needs of a suspect and accused person is established, which too often depends on the subjective evaluation by individual police officers;
 - (ii) the lack of independence of interpreters, particularly when they are directly employed by the police or when police officers providing interpretations themselves;
 - (iii) the low quality of interpretation provided as interpreters are not required to have comprehensive qualifications, an issue that is even worse in remote areas and when interpretation of less common languages is provided;
 - (iv) the failure to provide interpretation for meetings between the lawyer and client; and
 - (v) the insufficiency of mechanisms and remedy processes for challenging the failure to provide interpretation or its poor quality.⁶
5. In order to (a) determine the extent to which the Directive has addressed the above challenges; (b) identify any ongoing concerns, and (c) highlight (where possible) examples of good practice which could inform recommendations for both regional and domestic stakeholders, during 2015-2016 LEAP conducted a survey on the quality of interpretation in criminal proceedings.⁷ This report presents the results of this survey, provides thematic analysis of the findings, and concludes with recommendations for regional and domestic stakeholders in order to address the identified implementation challenges.
6. This report provides an overview of the situation in 18 Member States in relation to the provision of quality interpretation in criminal proceedings, with particular reference to the obligations set out in Articles 2 and 5 of the Directive. While the Directive does address the provision of both translation and interpretation services, this report will focus solely on the interpretation of oral statements during interrogations and court hearings and does not cover issues related to the translation of documents. Any mention of translation made by respondents to the survey has been omitted as it is beyond the scope of this report.
7. Fair Trials hopes that the information collated in this paper will assist the European Commission in identifying failures by Member States to comply with the obligations under the Directive and take enforcement action accordingly. For those Member States which are covered by the survey and this report, we hope the information provided will highlight certain areas of concern and enable lawyers to view their own system through a comparative prism and encourage courts to do the same. Further, it may inform the domestic advocacy efforts of NGOs, lawyers and bar associations and provide a useful knowledge base for academics conducting research into the area.

⁶ For details see: Fair Trials and LEAP, Report Stockholm Sunset, March 2014, para 33 – 39, available at: <https://www.fairtrials.org/wp-content/uploads/Stockholms-Sunset.pdf>; Vilnius Communiqué, Paris Communiqué, Amsterdam Communiqué, London Communiqué, Budapest Communiqué; Fair Trials and LEAP, Communiqué annual conference 2015, March 2015, paras 19, 20, available at: <https://www.fairtrials.org/wp-content/uploads/Communique-FINAL1.pdf>.

⁷ The survey is attached as Annex A.

8. We recognise that we are unable, in a study of this nature, to capture every subtlety of the national procedures and we are aware that laws adopted during the study or after may alter the position we present in our findings. As part of the ongoing implementation conversation, we are very happy to receive feedback on the report.

II. Quality of Interpretation: Relevant provisions of the Directive

9. The Directive codifies and builds on the case law of the European Court of Human Rights (“ECtHR”)⁸ to provide clearer guidance to Member States in relation to the right to interpretation and translation of suspects and accused persons.⁹
10. The ECtHR case-law on the right to interpretation interprets Article 6(3)(a) and (e) of the European Convention of Human Rights (“ECHR”), which provide:

“Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; [...]

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

11. While the relevant case law is not voluminous, it has provided core statements outlining the fundamental principles of the right to interpretation, such as in *Hacioglu v. Romania*, where the ECtHR stated:

“The Court reiterates that paragraph 3 (e) of Article 6 states that every defendant has the right to the free assistance of an interpreter. That right applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. This means that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court’s language in order to have the benefit of a fair trial [...]. This suggests that oral linguistic assistance may satisfy the requirements of the Convention [...] The fact remains, however, 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 [...] In view of the need for that right to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter

⁸ Recital 14 of the Directive outlines that the “Directive facilitates the application of the right [to interpretation and translation] in practice”. Recital 33 of the Directive confirms that “The provisions of this Directive that correspond to rights guaranteed by the ECHR or the Charter should be interpreted and implemented consistently with those rights, as interpreted in the relevant case-law of the European Court of Human Rights [...]”.

⁹ An overview over the ECtHR-jurisprudence on interpretation and translation can be found in Fair Trials, Toolkit on the Interpretation and Translation Directive, March 2015, available at: <https://www.fairtrials.org/wp-content/uploads/Language-Rights-Toolkit-FINAL.pdf>.

but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided.”¹⁰

12. Guided by this, the EU Member States’ obligations relating to the provision of interpretation in criminal proceedings are now articulated in Article 2 of the Directive, which confirms that suspects or accused persons who do not speak the language of the criminal proceedings must be provided with interpretation.
13. The Directive confers a right to interpretation through all stages of the proceedings, including police interrogations, court hearings and hearings before judges or other investigative authorities (Article 2(1)). The Directive also obliges Member States to provide interpretation for consultations between the lawyer and the suspect or accused person, but only “in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications” if this is “necessary for the purpose of safeguarding the fairness of the proceedings” (Article 2(2)).
14. The Directive requires that any interpretation provided must be “of a quality sufficient to safeguard the fairness of proceedings” (Article 2(8)). The quality requirement applies to all interpretation provided in accordance with the Directive, the scope of which extends from the outset until the conclusion of the criminal proceedings. The quality standard therefore applies equally at the police station and at the court. There is a clear parallel between the quality requirement in Article 2(8) and the ECtHR’s consistent requirement that interpretation should be “such as to enable the defendant to have knowledge of the case against him and to defend himself”.¹¹
15. Article 2(5) of the Directive provides suspects or accused persons with the right to challenge a decision denying them access to interpretation, as well as the right to complain about insufficient quality of interpretation. The Directive does not, however, provide detailed requirements as to the nature of such complaint mechanisms, such as to whom such complaints should be made and how the quality of interpretation should be ascertained. It is also unclear, how the “right to challenge” the denial of interpretation needs and the “possibility to complain” about the quality of interpretation differ. Recitals 24 and 26 provide some further guidance for the Member State how the Directive envisages the complaint channels.
16. Recital 24 suggests that Member States should ensure they can exercise control over the interpretation and translation and refers to the jurisprudence of the ECtHR, which requires the competent authorities not only to appoint an interpreter, but explains that “if they are put on notice in the particular circumstances” their duty “may also extend to a degree of subsequent control over the adequacy of the interpretation provided”¹². In further case law, the ECtHR has confirmed that in the case of special circumstances the authorities must remain aware and control that the specific interpretation provided is in fact adequate. For example, the ECtHR

¹⁰ [Hacıoğlu v. Romania](#), App. No 2573/03 (Judgment 11 January 2011).

¹¹ See for example, [Kamasinski v Austria](#), App. No 9783/82 (Judgment 19 December 1989), para. 74; [Hacıoğlu v Romania](#), App. No. 2573/03 (Judgment 11 January 2011), para 88.

¹² [Kamasinski v Austria](#), App. No 9783/82 (Judgment 19 December 1989), para. 74.

found a violation of the Article 6(3)(e) ECHR in a case where the court was relying on the “untested language skills” of a family member for interpretation.¹³

17. The findings are therefore very fact-specific and dependent on the evidence before the ECtHR. The “adequacy” standard and the requirements of “exercising control when put on notice” are therefore not particularly clear standards. It is hoped that the Directive, interpreted by the Court of Justice of the European Union (the “CJEU”), may offer some clearer guidance.
18. Recital 26 suggests that the authorities should replace an appointed interpreter if the quality of the interpretation is considered insufficient to ensure the right of a fair trial. It does not, however, provide criteria for the assessment of the quality of the interpretation. Further, replacing an interpreter may not be sufficient to “safeguard the fairness of the proceedings”, particularly if the poor quality interpretation led the suspect or accused person to provide incriminating statements which are subsequently used as the basis for a finding of guilt.
19. Article 5 of the Directive makes suggestions as to quality control mechanisms which Member States could develop. In Article 5(1) it outlines that Member States should take “concrete measures” to ensure that the quality requirements of Article 2(8) in the case of interpretation is met. While the Directive suggests that Member States should “endeavour” to establish a register of interpreters and translators (Article 5(2), this is not a firm obligation. The Directive does not provide guidance on how to assess the “independence” of interpreters in the specific case, or how to ensure that they are “appropriately qualified”.

III. Approach to the Survey

20. The survey (see Annex) consists of eleven questions relating to:
 - (i) Legislation and Policy, including questions on the transposition of the Directive, safeguards included in national law to ensure the quality of interpretation, and training provided for lawyers working with interpreters;
 - (ii) The implementation in practice, asking the respondents to provide their experience on the quality of interpretation provided in practice and their ability to identify poor quality interpretation; and
 - (iii) The right to challenge lack of quality in interpretation and remedies provided if a challenge is successful, as well as the respondent’s opinion on the practical limitations to exercising the right and the effectiveness of the remedy.
21. This report analyses the responses from LEAP members in 18 Member States¹⁴ which have been supplemented with further information collected during follow-up conversations with the respondents.

¹³ [Cuscani v. United Kingdom](#), App. No 32771/96 (Judgment of 24 December 2002).

¹⁴ Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Spain, Croatia, Ireland, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Sweden, and Slovakia.

IV. Country-by-country Findings

22. This section provides a summary of the survey respondents from 18 jurisdictions in the EU. The summary focuses on the three key aspects covered by the survey questionnaire, as outlined above.

Belgium (BE)

23. The implementation of the Directive faced some difficulties owing to Belgium's complex, multi-lingual political structure. Significant changes have been made, however, including the law regarding interpreters for criminal proceedings which was adopted on 10 April 2014.¹⁵ Before the change in the law, there was no legal framework for interpreters; there was only a system of non-official lists held by court clerks in the 27 judicial districts, which had no guarantee of quality. Previously, the right to interpretation was provided for in the Criminal Procedure Code (Article 282) and the "Franchimont" law 1998 (8, 5°) outlining that the suspect speaking a different language from the court must be provided with an interpreter, his statement must be recorded, or he must write down his own statement.

24. Since April 2014, Belgium has implemented a national register of certified interpreters. Proof of professional competence is required in the form of a diploma (or equivalent) obtained no longer than 8 years before registration. The interpreter must also have a certificate issued by a recognised educational institution acknowledging a certain (undefined) level of legal knowledge. Non-registered interpreters can only be used in very limited circumstances, including where, owing to the rarity of the language, no registered interpreter is able to assist.

25. Previously, it was reported, police officers would provide their own interpretation or would regularly use the same interpreters who are familiar with legal proceedings. Lawyers however remain responsible for obtaining interpretation services for meetings with their client and usually do this with the assistance of non-profit organisations such as "Lextra Lingua Belgica".

26. Article 24 of the Criminal Procedure Code now facilitates a mechanism for challenging poor quality interpretation, which includes the removal of an interpreter from the national register. The respondent reported that more obligatory trainings and tests for interpreters are still needed to raise standards.

Bulgaria (BG)

27. The Directive has been incorporated into Bulgarian domestic law by the new Chapter 30 A (Articles 395a-395h) of the Criminal Procedure Code. These provisions provide for the right of the arrested and accused person to have an interpreter prior to and during interrogation, during meetings with the defence lawyer and throughout the entire court process. These rights, however, pre-dated the new legislation. The changes to the law have not improved regulation

¹⁵ Legislative amendments, 20 February 2014, doc 53, 1499/008, available at: <http://www.dekamer.be/flwb/pdf/53/1499/53K1499008.pdf>.

of the quality of interpretation; the code has not incorporated Articles 2(8),¹⁶ 3(9),¹⁷ or 5(1)¹⁸ of the Directive.¹⁹ The only provision relevant to quality is the new Article 395e which covers the right of the defendant to challenge the “accuracy” of interpretation, which the Bulgarian respondent explains does not equate to the guarantee of quality required by the Directive.²⁰

Case study from Bulgaria

“I had an Italian client who was provided interpretation by a young interpreter from an agency-contractor of the Ministry of Interior. My client said he could not understand anything of the translation so he preferred to communicate with me in English, although his English was basic. He could barely understand what was happening during the entire process. I could not rely on statements made by him due to the language barrier and the complete mistrust he had towards the interpreter who had tried to convince him to make a confession before my arrival at the police station.

I experienced an identical situation with a Romanian client who was assigned a very old interpreter who had apparently not practiced the language for a long time. My client complained he could not understand him so during the pre-trial detention hearing I stood by him and translated to him in English.

Defence lawyer, LEAP Member, Bulgaria

28. A register for interpreters and translators existed before the implementation of the Directive. It is annually approved by the Ministry of Justice but there is no effective mechanism of quality control in place and many of the interpreters are retired, with outdated qualifications. The qualifications, experience and efficiency of the experts is not checked and there are no safeguards for entry onto the register (e.g. required proficiency with legal terminology).
29. The quality of interpretation varies depending on the individual interpreter and how common the required language is. Interpretation in courts is slightly better than that provided in police stations owing partly to the method of appointment; courts use experts from the approved register, but the police use experts from an agency which imposes fewer quality requirements.
30. The defendant can challenge “inaccurate” interpretation according to Article 395e of the Criminal Procedure Code; however, the effectiveness of such challenges is limited by a lack of precise criteria to assess “inaccuracy”. The final decision on inaccurate interpretation would also be taken by the prosecution department or an investigative authority, who are not necessarily competent (nor sufficiently independent) to make such an assessment. However, if such challenge is successful the previous procedural act would be repeated with a new interpreter.

¹⁶ Requiring the quality of the interpretation to be “sufficient to safeguard the fairness of the proceedings”.

¹⁷ Requiring the quality of translation to be “sufficient to safeguard the fairness of the proceedings”.

¹⁸ Requiring Member States to take concrete measures to ensure quality of interpretation and translation.

¹⁹ See in more detail: LEAP, Submission to the Bulgarian Ministry of Justice, March 2016, available at: https://www.fairtrials.org/wp-content/uploads/LEAP_BG_MOJ-SubmissionEN.pdf?platform=hootsuite.

²⁰ See in more detail: LEAP, Submission to the Bulgarian Ministry of Justice, March 2016, available at: https://www.fairtrials.org/wp-content/uploads/LEAP_BG_MOJ-SubmissionEN.pdf?platform=hootsuite.

31. The respondent reported that poor quality interpretation can only be detected by defence lawyers or the authorities if a language is being interpreted that the defence speak themselves or if the client complains. There is no available training for defence lawyers on working with interpreters.

Cyprus (CY)

32. The Directive was partly incorporated into national law in Cyprus by the Law 18(1) 2014,²¹ with the relevant provisions inserted into the Criminal Procedure Code. There is no reference in this, or any other Cypriot law, to the quality of interpretation. During a hearing, the interpreter will be questioned by the court on their qualifications in relation to interpretation in the relevant language. If no objections are made by either party, the hearing will continue. There are no criteria set out in the law for accredited interpreters. This was highlighted as a failure by the Commissioner for Administration and Human Rights (Ombudsman) in a report in 2014.²²

33. The quality of interpretation provided in criminal proceedings is variable. It is unusual for the same interpreter to be provided throughout every stage of criminal proceedings, so the quality is often inconsistent. Commonly, interpreters will not be able to interpret legal terms, to the disadvantage of the suspect or accused person.

34. No training is available for defence lawyers on working with interpreters, and lawyers find it difficult to determine when the quality of interpretation is poor, unless it is a language they understand. It is extremely difficult for a suspect or accused person to challenge the provision of poor quality interpretation, especially if he is poor and has no means to instruct a qualified defence lawyer. An interpreter will only be replaced if an objection is raised by one of the parties to proceedings.

Czech Republic (CZ)

35. Changes to the law were made in November 2013 to implement the Directive in the Criminal Procedure Code. The right to interpretation of the lawyer's consultations with the clients is now explicitly codified, but the respondent expressed concern about the lack of interpretation provided for meetings between lawyer and client which are not in the context of procedural actions.

36. There is no requirement relating to the quality of interpretation in the Czech law. However, a register of interpreters managed by the Ministry of Justice and the chairman of the regional court is in place. According to Article. 4(1)(e) of Act No. 37/1967 Coll., interpreters must have "knowledge" and "experience" in the relevant language and "preferably have participated in specialist interpretation training".²³ However, in practice there are no minimum standards for

²¹ http://www.cylaw.org/nomoi/arith/2014_1_18.pdf.

²² Commissioner for Administration and Human Rights (Ombudsman Cyprus), Report: A/Π 1730/2014, available at:

http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/index_new/index_new?OpenForm.

²³ Act on Experts and Interpreters 1967, available at:

<https://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=30964&nr=36~2F1967&rpp=15#local-content>

experience or education and no obligation to pass a specific test or examination in order to be on the register of interpreters.

“According to Criminal Procedure Code of the Czech Republic, consultations between a lawyer and client during the procedural actions must be interpreted. In practice, interpretation is only provided for consultations immediately before interrogation or during a court hearing. Additional interpretation is paid for by the lawyer first and then (after the case is over) the lawyer is reimbursed if the court approves the claim.”

Defence lawyer, LEAP Member, Czech Republic

37. While mechanisms for ensuring the quality of interpretation are weak, the respondent confirmed that, in his experience, the quality of interpretation is generally satisfactory at every stage of proceedings. The main problems relate to a lack of knowledge on behalf of interpreters of legal terminology and cultural specifics such as “criminal slang”.
38. Neither the Act on Experts and Interpreters nor the Criminal Procedure Code explicitly regulate challenges to the quality of interpretation. Practically, it is possible to request that the court or police appoint a different interpreter and challenge poorly interpreted evidence, but a convincing argument would need to be put to the court for why the original interpretation should not be used. In practice it is very hard to demonstrate that the quality of interpretation was poor and there is no appeal process if the challenge is unsuccessful. Training for lawyers relating to working with an interpreter is not available. The Chamber of Court Appointed Interpreters and Translators organises courses for interpreters but not for lawyers.

Estonia (EE)

39. In September 2013, amendments were made to the Estonian Code of Criminal Procedure to implement the Directive, however the changes did little to address quality. Article 161(3) and (6) of the Estonian Code of Criminal Procedure regulates the provision of interpretation in criminal proceedings. With no register of interpreters in place, the only measures which ensure the quality of interpretation are: (i) the ability of the defendant to make a complaint about false interpretation (which only applies at pre-trial stage); (ii) the ability of the investigator, prosecutor, or judge to remove an interpreter if they do not perform their duties as required or if the quality may impair the defence; and (iii) at trial, the possibility for the defence to submit a motion to replace the interpreter where the quality of interpretation is poor (this measure is not expressly provided for by the Code of Criminal Procedure, but can be derived from other provisions). These measures are not considered by the respondent to be very effective. There do not seem to be any opportunities for training for lawyers who work with interpreters.
40. The respondent explained that the quality of interpretation varies hugely from poor to excellent at each stage of the legal process, but challenges to poor quality interpretation are rare because most suspects and accused persons are not aware of this right and will only be able to file a complaint if they have instructed a lawyer in their case. The system is relatively easy to access, but lack of awareness is difficult to overcome. There is an untested legal argument that very

poor quality interpretation equates to non-participation of the interpreter and can therefore be treated as null and void and evidence obtained in this way should not be used, however, the law itself does not outline specific remedies that are available and should be applied.

Greece (EL)

41. In February 2014, law number 4236/2014 transposed the Directive into the Greek Code on Criminal Procedure.²⁴ Article 233(1) of the Code on Criminal Procedure provides the right to interpretation for suspected persons, defendants and witnesses who do not fully understand Greek, at any stage of the criminal procedure. Where necessary, this also applies to communication between the defendant and their lawyer, although in practice this is rarely provided. Article 233(2) states that the interpreter must be appointed by the register established by the Council of Misdemeanours. The Minister of Justice is responsible for outlining the qualifications necessary to be entered on the register through ministerial order; in practice, the respondent explained that interpreters on the register are insufficiently qualified for the purpose of legal interpretation as the requirements are very low.
42. Interpreters provide their services under an oath that they will interpret accurately and confidentiality (Article 236 Code on Criminal Procedure). Article 238 provides that when a language is particularly unusual, an “interpreter for the interpreter” may be appointed. The cost of interpretation is governed by Article 238B of the Code on Criminal Procedure which provides that the State shall meet the costs irrespective of the outcome of the proceedings, but the defendant must reimburse the State if they can afford it, contrary to the requirements of the Directive which dictate that Member States should cover all such costs.
43. The respondent explained that the quality of interpretation is poor or limited at every stage of the proceedings. In court hearings, interpretation is provided by poorly qualified interpreters unless the defendant is able to appoint and pay for a private interpreter. The right to a fair trial often suffers due to a lack of available interpreters and poor quality of interpretation. Lawyers can, at times, detect poor interpretation particularly when the language in question is English or if there is an obvious reaction from the suspect and accused person. No free or compulsory training is provided for by the State for defence lawyers on how to best work with interpreters.
44. Article 233(1) of the Code on Criminal Procedure provides for the right to challenge the decision that interpretation is not required or when the quality of interpretation is poor. Objections to the standard or provision of interpretation can be submitted to the Prosecutor, Council of Misdemeanours, or the Court, depending on the stage of proceedings. The role of the lawyer is critical to this objection. The only remedy available for poor interpretation is the replacement of an interpreter following a successful objection.

²⁴ Articles 233, 236 of the Code on Criminal Procedure were amended, Articles 236A, 238A and 238B of the Code on Criminal Procedure were added.

Case Study from Greece

Last year, a British citizen was arrested in Spain and extradited to Greece following an EAW. The defendant had been arrested 5 years earlier in Crete for possession of counterfeit banknotes. When he appeared before the Investigating Judge a local lawyer acted as an interpreter. The defendant was released on bail but was never informed - in a language that he understood – of his obligation to deposit a certain amount of money to the tax authorities. As a result, his failure to comply with the bail conditions resulted in an EAW being issued. Practically all foreigners complain about the quality of interpretation at least at the trial stage.

Defence lawyer, LEAP Member, Greece

Spain (ES)

45. The Directive has in parts been transposed into domestic law in Spain, providing for the translation of documents but not referring to interpretation although interpretation is usually provided at police or court hearings. The legal provisions do not refer to the quality requirements of the Directive, nor has a registry of interpreters been implemented. In fact, the issue of introducing a registry is strongly debated amongst interpreters and translators.
46. The quality of interpretation was considered to be consistently poor. In court hearings comprehensive and simultaneous interpretation is usually not provided, thus denying the suspect the opportunity of effective participation. Further, if the defendant speaks more than one language, the respondent has experienced incidents where the court decides which language they should speak (regardless of which language they may speak better). Some interpreters are contracted repeatedly by the Police Agency, which may impair their independence as they are keen to be re-contracted, instead of being contracted of the more independent contract with the Ministry of Justice.
47. The respondent referred to situations where the judge speaks the language being interpreted well enough to detect poor interpretation and request another interpreter, but this is clearly not a systematic check on the quality of interpretation. No training is available for defence lawyers on working with interpreters. Suspects and accused persons cannot effectively challenge poor quality interpretation and no specific procedure has been introduced for such complaints. A lawyer highlighting poor interpretation may “upset” the courts so lawyers may be deterred from raising complaints of this nature. In other cases requests for replacing interpreters have been denied by the courts. Any formal challenge would be considered a complaint against the court administration generally and would not be successful. Additionally, there are currently no remedies available for poor quality interpretation.

Croatia (HR)

48. In order to transpose the Directive, Articles 8, 47, 64, 108a, 208 and 239 of the Law on Criminal Proceedings were amended in December 2013. Quality safeguards in the Croatian law include a

registry of interpreters (which was already in place prior to the Directive's transposition deadline) and the right to challenge the quality of interpretation and the replacement of the interpreter if this challenge is successful.

49. The respondent considers the quality of interpretation generally to be sufficient, although lawyers find it very difficult to assess the quality of interpretation if they do not speak the language that is being translated themselves. No training is available for defence lawyers regarding working with interpreters.
50. Article 8(10) of the Law on Criminal Proceedings codifies the suspect and accused person's right to challenge the insufficient quality of interpretation. Where such a challenge is successful, the court is obliged to replace the interpreter. Further remedies to restrict the use of evidence obtained with poor quality interpretation are not provided. In practice, it is very difficult to prove that the quality of interpretation was "insufficient" and the only way to challenge a negative decision would be an appeal against the sentencing judgment.

Ireland (IE)

51. No changes have been made to the Irish Criminal Procedure to implement the Directive and there remains no law in Ireland governing the quality of interpretation. There is a tender process for the provision of interpreters and quality of the service is extremely variable.

"The tender process is an economic model, and not a quality model. Any changes would be costly and are unlikely to happen soon."

Defence lawyer, LEAP Member, Ireland

52. To work as an interpreter in criminal proceedings, an individual must be an employee or contractor with a tenderer, or an independent operator able to work on a private contract. The successful tenderer provides all courtroom and police station interpreters. The highest level of supervision of interpretation is in the courtroom, but the respondent reported that many judges are "indifferent to the role played by interpreters" and "often ignore the obvious lack of simultaneous translation".
53. Active participation of interpreters is improving in Dublin, which has the largest population by a significant margin; however, it was suggested that outside Dublin the quality of interpretation remains very mixed. This is partly owing to an absence of a register, minimum standards, and quality control. Particular problems reported by the respondent relate to situations in which poor quality interpretation gives a "misleading impression to the jury".
54. No training is available to lawyers on how to work with interpreters. There is no formal mechanism for challenging poor quality interpretation, and if such complaints are made, the responses by the judiciary are mixed. A judicial review would be the final option in such a situation, but the respondent was not aware of any cases in which this has been done

successfully. It was suggested that the State should establish a quality controlled register of interpreters.

Italy (IT)

55. Legislative steps have been taken to implement the Directive in Articles 143 – 147 of the Italian Criminal Procedure Code although there are no concrete measures to ensure that the quality of interpretation is sufficient to safeguard the fairness of the proceedings.²⁵ A register of interpreters is available. The quality of interpretation varies at different stages of proceedings and interpretation at police stations is considered to be particularly poor. The standard was considered to be better during investigative acts and court hearings.
56. No training on working with an interpreter is available for defence lawyers. Suspects and accused persons can challenge poor quality interpretation by complaining to the court in the criminal proceedings, but it was considered that this system was not readily accessible to everyone owing to limited resources. The law only provides general remedies for poor quality interpretation, including closing the relevant stage of proceedings following an appeal against a judgment or order. The respondent considered that special remedies (e.g. review or replacement of interpretation) would cause delays and unfairly draw out the length of criminal proceedings. It was also highlighted that the national financial crisis has put a strain on resources.

Lithuania (LT)

57. The Directive has not, to date, resulted in any changes to Lithuanian law. Articles 57 and 58 of the Lithuanian Code of Criminal Procedure govern procedures on interpretation. Article 57(3) aims to safeguard the quality of interpretation by providing for the removal of an interpreter from the proceedings if they are demonstrated to be incompetent. Other safeguards to prevent interpreter misconduct include the interpreters being sworn in before the court proceedings and informed of their criminal liability should they give intentionally misleading or false interpretation.
58. Instances of poor interpretation do exist. This is particularly the case if the language in question is rare, but even interpretation from the most common languages (English and Russian) can be of very low quality, rendering conversations between the parties of the proceedings impossible. Further, the same interpreter is provided for formal acts of the investigations such as police interrogations as well as for private consultations between the lawyer and suspect and accused person. This gives rise to concerns of confidentiality as the interpreter might accidentally provide information to the police obtained during confidential client and lawyer meetings. No training is available for lawyers who work with interpreters.
59. A suspect and accused person can, at any stage of the proceedings, request that an interpreter be removed from proceedings if evidence can be given of their incompetence (Articles 57 and 58 Code of Criminal Procedure). Otherwise, there is “little oversight” of the quality of

²⁵ Articles 143-147 of the Italian Criminal Procedure Code concern interpretation and translation.

interpretation and there are no periodic reviews of performance. Other than the removal of the interpreter in question, there are no further remedies provided following a successful challenge. Using criminal liability as a quality safeguard for the quality of interpretation is, in the view of the respondent, completely ineffective as interpreters rarely provide poor quality interpretation intentionally and are thus almost never liable. Further, this “remedy” does not serve as a safeguard of the fairness of the proceedings for the suspect and accused person because evidence collected with poor quality interpretation may, theoretically, still be used as a basis for a conviction.

Malta (MT)

60. To incorporate the Directive, Articles 534AC, 534AD and 534AE were added to the Criminal Code of Malta. Article 534AC (6) of the Criminal Code provides that interpretation “shall be of a quality sufficient to safeguard the fairness of the proceedings.” Furthermore, Article 534AE (2) of the Criminal Code provides that the registrar shall keep a register of interpreters who are “appropriately qualified”, although this term is not defined in any way. The respondent indicated, however, that in practice the register is useful mostly as a “reference point.” Beyond this, no concrete measures have been introduced to ensure that the quality of interpretation is sufficient to safeguard the fairness of proceedings. Nonetheless, the quality of interpretation is generally sufficient and interpreters from the register are used in both police stations and court hearings. When interpretation from Maltese to English is required in court, one of the lawyers present (not involved with the defence) will usually be appointed as interpreter since most lawyers speak both languages. The State also provides an interpreter for communication between lawyer and client where necessary.²⁶
61. Difficulties with interpretation were noted when the suspect or accused person has a particularly heavy or unusual accent. The language of court proceedings is Maltese and, reportedly, quality also drops when the interpreter does not speak Maltese as some things are lost in the “double-interpretation” (from the suspect’s and accused’s language, to English, and then to Maltese). The lawyer sits with his back to the accused which prevents them from picking up visual signs of confusion. No training is available for defence lawyers working with interpreters.
62. The only legal reference to the right to challenge poor quality interpretation is found in Article 534AC (5) which provides for the “possibility to complain that the quality of interpretation is not sufficient to safeguard the fairness of proceedings”, however no further information is provided on how such complaints should be made. In practice, the accused could challenge the interpretation by submitting a written or oral request to the court. Theoretically, this system is widely accessible to suspects and accused persons, however since there is no law governing the matter, the results of a challenge are unpredictable. Remedies are completely at the discretion of the court. It was suggested by the respondent that a mechanism for challenging the provision of poor quality interpretation and available remedies should be codified in Maltese law.

²⁶ Criminal Code Article 534AC (2): "Interpretation shall be made available for communications between the suspect or the accused 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.

Netherlands (NL)

63. According to our respondent, the provision of interpretation in criminal proceedings in the Netherlands goes beyond the minimum standards required by the Directive. The quality of interpretation in the Netherlands is governed by the “Wet beedigde tolken en vertalers”²⁷ (Law on accredited interpreters and translators), passed in 2007. In Chapter II, the law specifies rules on education and exams, quality checks, and requirements for the official court register for interpreters. The language knowledge of all interpreters on the registry is reviewed every five years. For rare languages, for which there are no specific exams or studies available and the interpreter can therefore not fulfil the requirements to join the official registry, they may be placed on the so-called “alternative” list of interpreters, which will still require for example five years’ experience of professionally interpreting that language and 420 hours of interpreters’ training. However, in cases where interpretation is required urgently, a non-registered interpreter may provide interpretation if they provide a statement or certificate of integrity. The defence lawyer will not necessarily know if the interpreter used during a police hearing is registered or not.
64. Chapter IV of the Law on accredited interpreters and translators provides for a complaints system. Information provided by the central translation bureau to the respondent indicated that they are always able to find an appropriate interpreter if requested by the court, police, or lawyers, regardless of the language.
65. For practical reasons, interpretation for police interrogations and for meetings between the suspect and accused person and their defence lawyer is often provided over the phone. This can present some difficulties, and the respondent is aware of some situations in which the suspect and interpreter did not understand each other. In particular, some interpreters have a practice of summarising the suspect’s statement and not interpreting each sentence individually and can become defensive if the defence requests a more comprehensive interpretation. For this reason, the respondent usually requests an interpreter to be present in person when meeting a client for lawyer-client meetings for example in pre-trial detention. In court hearings, the quality of interpretation is higher, as an interpreter will be present, sat next to the suspect and accused person and interpreting each sentence even if not simultaneously. Further it will often be the same interpreters interpreting throughout the whole trial and the defence lawyer may request their preferred interpreter to be appointed by the court. Overall, however, the system is considered to be very effective and the quality of interpretation generally high.
66. The respondent finds it hard to identify poor quality interpretation unless she is familiar with the language in question, or where the interpretation of the suspect and accused person’s testimony appears to make no sense. Where a challenge against the quality of interpretation is made, which happens rarely, it is possible to remove individual interpreters from the register or exclude evidence from the case file that was obtained in violation of the Dutch requirements. Similarly, if no interpretation was provided despite the suspect and accused person not

²⁷ <http://wetten.overheid.nl/BWBR0022704/2016-01-18>.

speaking Dutch sufficiently, statements made will be excluded from the case file and not be used in court.

Poland (PL)

67. The Directive was implemented in 2013 into the Polish Criminal Procedure Code (by amending Articles 195, 196, 205, 233(4)). Article 72(2) of the Polish Criminal Procedure Code in 2013 was also amended to include the provision of an interpreter to enable communication between the suspect and accused person and their defence lawyer. A register for interpreters has been in existence in Poland since 2004. Article 196(3) of the Criminal Procedure Code refers to the quality of interpretation as it provides a right to challenge poor quality interpretation.
68. The duties of an interpreter can be performed by either an interpreter on the official registry or someone known to have adequate knowledge. The registry is regulated by the Ordinance of the Minister of Justice on Court Experts (Rozporządzenie Ministra Sprawiedliwości w sprawie biegłych sądowych). The law on the Profession of a Sworn or Certified Interpreter or Translator (Ustawa o zawodzie tłumacza przysięgłego) sets out the main criteria to join the profession and the accredited register, which included having passed an exam (written and oral) proving their skill to interpret from Polish to a foreign language and vice versa. Certified interpreters are appointed by law enforcement authorities and are obliged to accept instruction from the court.
69. This regulation of interpretation is usually sufficient to safeguard quality at the trial stage but the availability of interpretation is limited at the pre-trial stage. Often, police officers will not request interpreters and rely on their own knowledge of other languages, especially when the suspect and accused person has some knowledge of Polish or comes from a Slavic speaking country. Accordingly, the quality of interpretation is variable and English is often used as the language of interpretation, regardless of the suspect and accused person's level of proficiency, as it is the most common second language of Polish officials. Digital recording is rarely used in practice with statements usually recorded in writing directly in Polish. It is therefore difficult to track potential inconsistencies or gather evidence of poor interpretation. The experience of the respondent was that interpreters are rarely, if ever, present at meetings with a lawyer. No training is available for defence lawyers on how to work with interpreters.
70. Article 196(3) of the Criminal Procedure Code provides the right to challenge poor quality interpretation with the provision of a new interpreter being the remedy. Previously obtained evidence does not necessarily have to be excluded from the case. Challenging low quality interpretation in practice is difficult due to difficulties in gathering evidence to support the challenge. The Polish Criminal Procedure Code also provides for disciplinary measures against interpreters who can be "disqualified" for lack of impartiality or lack of qualifications. Criminal accountability is also imposed on interpreters in certain circumstances by Article 233(4) of the Polish Criminal Code.

Portugal (PT)

71. No changes have been made to the Portuguese legal framework in order to transpose the Directive. Article 92 of the Portuguese Criminal Procedure Code provides that a state-funded, “suitable” or “reputable” interpreter must be provided if a suspect and accused person does not speak Portuguese fluently.
72. There is no system according to which interpreters are licensed or registered for the purpose of providing interpretation in criminal proceedings. Quality of interpretation is variable depending on the specific interpreter but not the stage of proceedings. The experience of the respondent indicates that interpreters at the early stages of proceedings (including meetings with the lawyer) have to be paid for privately by the suspect and accused person. The respondent believes that poor quality interpretation rarely has an impact on the proceedings as lawyers successfully challenge the lack of good quality interpretation immediately. However, in the respondent’s view, the provision of simultaneous interpretation throughout the whole trial would help to ensure the fairness of the proceedings. Further, quality would likely improve if pay for interpreters increased so that well-qualified and experienced interpreters are more willing to work for courts. There is no training available to lawyers to help them work with interpreters.
73. Under Article 2(8) of the Directive and Article 47(1) and 153(2) and (3) of the Portuguese Criminal Procedure Code, a lawyer can request that the interpreter be replaced. The request should be addressed to the person responsible for the respective procedural phase, e.g. during the pre-trial phase, a claim may be submitted to the investigative judge under the provisions of Article 268(1)(f) and 32(4) of the Criminal Procedure Code. In practice, however, it is difficult to launch a challenge because in most cases, neither the defendant nor the lawyer will understand both languages, making it difficult to identify poor quality interpretation. Additionally, it is nearly impossible to establish poor quality interpretation because only a few stages of the proceedings are recorded. For this reason, judges consider that inaccuracy should be argued at the moment of interpretation. Judicial decisions regarding interpretation can be appealed to the competent Court of Appeal with territorial jurisdiction.

Romania (RO)

74. A new law has been proposed in Romania with the purpose of transposing the Directive. At the time of writing, it is still in the Chamber of Deputies (decision-making chamber) awaiting adoption. The right to interpretation in criminal proceedings is currently provided for by Articles 12, 100, 102, 105 of the Romanian Code of Criminal Procedure. The Ministry of Justice authorises individuals to become interpreters (Article 3(c) Law 178/1997). This involves verification of a baccalaureate diploma or BA diploma evidencing graduation from high school or university with a qualification in the relevant language but does not require any proof of knowledge of legal terms. The draft law transposing the Directive however foresees a change to the accreditation of interpreters by introducing a compulsory exam. Other proposed provisions include the ability to suspend an interpreter and the imposition of confidentiality obligations on interpreters.

75. The respondent assesses the quality of interpretation provided currently as generally good throughout the proceedings, including during police interrogations, meetings between the lawyer and suspect and accused person and court hearings. In court, the interpretation provided is generally of a slightly higher standard as the court has more time to identify a qualified and experienced interpreter than the police.
76. Articles 100 and 102 of the Code of Criminal Procedure provide for the right to challenge interpretation that is of insufficient quality, and this procedure is considered by the respondent to be easily accessible. The judge may exclude any evidence obtained with the help of an interpreter who provided poor quality interpretation. The proposed law includes provisions allowing for the suspension of an interpreter from the registry in certain circumstances.

Sweden (SE)

77. Only minor changes have been made to Swedish law in order to transpose the Directive because the pre-existing legislation was, for the most part, compliant. Chapter 5, section 6 of the Code of Judicial Procedure in Sweden specifies that the court should, if possible, use an authorised interpreter for criminal proceedings. Otherwise, the court shall assign a “suitable person” to assist as interpreter in the case. A register was already in place before the Directive was adopted, requiring a test of competence for admission. The respondent considered that these mechanisms were reasonably effective, where authorised interpreters for specific languages were available. It was reported that the problem with the quality of interpretation is largely owing to limited human and financial resources. As a Member State with a relatively small population and an unusual language, the number of interpreters (of all standards) is low.
78. Challenges can be brought where there is poor quality interpretation and issues are usually addressed as soon as they arise. It is possible to order another interview where poor interpretation has affected the investigation; however, all evidence may be considered by the court and it is the responsibility of the lawyer to persuade the court to compensate for, or disregard, evidence obtained through poor quality interpretation. Trusted interpreters can also be used, on occasion, to review protocols from interviews if there is uncertainty. The respondent was not aware of any training for defence lawyers on working with interpreters.

Slovakia (SL)

79. The Directive was incorporated into Slovakian national law. The quality of interpretation is ensured by the use of interpreters from a register of licensed interpreters experienced in a wide range of languages (excluding only very rare languages). Interpreters on the register will have been examined to a high standard. Generally, interpretation is not provided in prison, but only in connection to specific investigative acts and hearings as required by the Directive. The defendant can pay for an interpreter to be available in prison if required. Often, the suspect and accused person will choose a lawyer who speaks their language, meaning the lawyer can sometimes assist the interpreter (for example with legal terminology). The licensed interpreters are particularly reliable. According to the respondent, interpretation is of a generally good standard, but varies slightly depending on the individual interpreter.

Case Study from Slovakia

In one case about 10 years ago, I was working on a case with a Chinese client and working with an interpreter. It was a memorable case, because nobody else in the room understood what the defendant was saying, we were completely dependent on the interpreter.

Defence lawyer, LEAP Member, Slovakia

80. No training is available for lawyers on working with interpreters, but the respondent considered that the system worked satisfactorily without such training. If necessary, poor quality interpretation can be challenged by a complaint to the police investigator, prosecutor or judge.

V. Thematic analysis

81. In this section, the different responses to the survey are analysed and compared by themes providing insight to common challenges and highlighting examples of good practice in certain Member States. It was not possible to go into the same level of detail for every response; thus, the fact that a Member State is not listed in a specific paragraph does not of itself mean that the issue is inapplicable in that jurisdiction.

Legislation and Policy

82. In almost all Member States covered by the survey responses, the Directive has been transposed to some extent, but in several Member States this has involved only minor amendments to existing legislation rather than wholesale reform (**BG, LI, PT, IT, EE, BE, PL**). Some survey respondents cited difficulties in implementation as a reason for slow progress; **Belgium**, for example, has difficulties as a multi-lingual Member State with a complex political structure which has slowed down the implementation process.
83. While the law of most Member States includes the right to interpretation throughout criminal proceedings, the legislation of many Member States makes little to no reference to the Directive's requirement, under Article 2, that the quality of interpretation is of a "sufficient" standard in order to safeguard the fairness of proceedings as required by the Directive (**CY, CZ, EE, IE, IT, LT, PT, RO**).
84. Under Article 5 of the Directive, Member States are required to take "concrete measures"²⁸ to ensure such quality. While not a firm obligation imposed by the Directive, only eleven of the eighteen countries covered by the survey responses have a register of interpreters (**BE, BG, CZ, EL, HR, IT, MT, NL, PL, SW, SL**), with several of those registers pre-dating the Directive. A few respondents suggested that due to the resources required in effectively establishing and

²⁸ Article 5(1) of the Directive, see above note 1.

administering such register, there might be little incentive to create or reform such a registry, particularly in the current economic climate **(ES, IE, IT)**.²⁹

85. Where registers are used, respondents noted inadequate entry requirements for the registry as well as insufficient ongoing monitoring **(BE, BG, CZ, EL, IE)**. The quality of interpreters on the register was found to be inconsistent by some respondents due to inadequate monitoring **(BG)**, discrepancies in regional testing **(BE)**, or vague³⁰ or inadequate requirements **(BE, BG, CY, CZ, MT)**.
86. In practice, the effectiveness of a register as a quality control mechanism varies hugely depending on the criteria for joining such a register which range from having studied the language for several 100 hours, passing an exam and several years of experience in interpreting in the **Netherlands** to less clear requirements such as being “appropriately qualified” **(MT)**, “having knowledge and experience and preferably participated in a specialist training” **(CZ)** or many registered interpreters in fact being retired and their qualifications outdated **(BG)**.
87. Another commonly cited issue with the efficiency of a register of interpreters was the lack of interpreters available for unusual languages. The failure to provide interpretation for suspects and accused persons who spoke an unusual language, or the poor quality of such interpretation where provided, was mentioned by a number of the respondents **(BE, BG, LT)**.
88. Where there were efficient registers in place, the standards of interpretation were generally considered to be adequate (for example in **NL, SL, PL**). In **Slovakia**, there are strict requirements for entry onto the register and high qualification thresholds maintain a high standard of interpretation. Some countries have no register in place **(LI, PT, EE)** or instead rely upon a private tendering process for interpretation work **(IE)** which leads to inconsistencies and inadequacies in quality. Almost all of the respondents recommended either the implementation of a register of qualified interpreters (where one did not already exist) or an overhaul of the requirements for accreditation (including more rigorous testing and training) so that the quality of interpreters on the register would be higher and more consistent **(BE, BG, CY, CZ, EE, EL, ES, IE, IT, LT, MT, PT)**.
89. Other quality control mechanisms adopted include interpreters taking an oath to interpret accurately **(EL, LT)**, and in Lithuania, such an oath is enforced through the imposition of criminal liability for intentionally interpreting wrongfully. However, neither of these mechanisms are considered effective in ensuring good quality interpretation – not least because it will usually be a lack of language knowledge rather than a lack of willingness which is the cause of poor quality interpretation.

²⁹ A few respondents noted that the current economic climate in Europe made it unlikely that governments would be amenable to introducing costly quality control systems such as state examinations or a monitored register of interpreters/translators **(ES, IE)**.

³⁰ For example, interpreters shall be “appropriately qualified” **(MT)**.

“I am presently working on an appeal against a claimed wrongful conviction for murder and rape where the appellant claims that poor interpretation put forward a misleading impression to the jury, a view endorsed by junior counsel in the trial [who was] fluent in the language. The language: Irish. Our first constitutional language is still the spoken natural mother tongue in small pockets of the country, and some witnesses in the trial in question opted to give evidence in Irish, requiring an interpreter. Linguistic nuances were, according to my client, conveyed erroneously to the court, a view endorsed by counsel [...]”.

Defence lawyer, LEAP Member, Ireland

90. The Directive does not require Member States to provide training for lawyers, but recommends training for judges, prosecutors and judicial staff in Article 6 “to ensure efficient and effective communication”. The importance of such training was recently reaffirmed in the Netherlands as interpreters complained about their difficulties in effectively working with courts, which prompted the courts to provide an article on the “10 points of best practice in working with interpreters”.³¹ As the effective protection of all procedural rights depends on suspects and accused persons being able to communicate with their defence lawyers, such trainings for lawyers should also be offered to achieve the aim of the Directive.
91. In the absence of objective mechanisms for assessing and monitoring the quality of interpretation, and especially the experience of many respondents that the quality of interpretation provided varies strongly in quality, it falls to the defence lawyer to identify if the quality of interpretation is poor. At the same time most lawyers surveyed indicated that they could tell if the interpretation was poor only if it was in a language they understood – mostly commonly, English (**BE, BG, CY, CZ, EE, EL, ES, HR, IT, PL, PT, SL**). In exceptional cases, lawyers may be able to detect insufficient interpretation when the communication between their client and the interpreter deviates from a recognised pattern or makes little sense (**NL, IE**) or if the client can communicate a complaint (**BE, BG, EL**). Apart from a **Dutch** respondent, none of our respondents, all of whom were defence lawyers or NGO-staff working on fair trial rights, are aware of any training provided for lawyers working with interpreters.

Good practice example from the Netherlands

Following the implementation of the Directive, police officers no longer interrogate suspects in English. This had been a common practice previously with great risks to the suspect and accused person, as often neither the police officer nor the suspect and accused person would speak English well.

Defence lawyer, LEAP Member, Netherlands

³¹ De Rechtspraak, “Best practice interpreting and translation criminal justice”, 29.01.2016, available at: <https://www.rechtspraak.nl/Voor-advocaten-en-juristen/Reglementen-procedures-en-formulieren/Strafrecht/Paginas/Best-practice-vertolking-en-vertaling-strafrechtspraak.aspx>.

92. **Summary:** The incorporation into national law of the quality requirements in the Directive is commonly inadequate and safeguards are insufficient. Although efforts have been made in most Member States surveyed, there are still substantial improvements that need to be made to ensure the effective implementation of the Directive across the EU. This is required so that suspects and accused persons can be assured of their right to a fair trial at every stage of proceedings regardless of their language requirements. It is important to pay particular attention to the quality provisions in Article 5 of the Directive for all stages of the criminal proceedings. Key recommendations include the incorporation in national law of statutory quality requirements and the development of a state register of qualified interpreters.

Implementation in Practice

93. Although the quality of interpretation was mostly reported to be variable at every stage, it was reported to be poorer in **police stations** across almost all of the countries covered by the survey responses. In a few countries, it was reported that police officers would not bring in an external interpreter when one was required, but preferred to rely on their own language skills to interpret (**PL, EL, BE**). In **Poland**, it was noted that this was particularly prevalent when the suspect spoke another Slavic language; police would try to develop some kind of understanding with the suspect because the language is similar to Polish. This is troubling as this method of interpretation can only ever provide an approximation of what is being said; specific details may be lost which impact on the suspect's ability to understand the case against them and exercise his defence rights. Additionally, this presents a conflict of interest as the police officer is assisting the suspect and accused person while simultaneously interrogating them.
94. In other countries, the police officers will regularly call the same interpreter with whom they have already developed a constructive working relationship (**BE, BG, HU**, in some cases also **Spain**). While this may mean that the interpreter is better acquainted with legal terminology, it nonetheless causes great concern about the quality and impartiality of interpretation in police stations. There is some recognition that legal interpretation requires particular skill and, interpreters active in police stations do not always possess this skill. For example, the requirements for interpreters at the police station and court in **Bulgaria** differ: the courts use experts from the approved register but the police use experts from an agency which has a lower quality threshold.

Case Study from Malta

“One of my clients was from the Cote d'Ivoire and spoke French. His court appointed interpreter however, could not properly understand his accent because he was not used to hearing French spoken in that accent. I asked the court to replace the interpreter. I suggested that the interpreter I normally worked with when meeting with the accused take his place, since she was experienced in interpretation for asylum seekers from the Cote d'Ivoire. The court denied this request (without providing reasoning). Since the accused and the interpreter could not communicate properly, it was very difficult for the accused to testify. [...] after this experience, the accused chose not to continue testifying. He was the only witness that the defence had so it substantially weakened our defence.”

Defence lawyer, LEAP Member, Malta

95. The standard of interpretation has been reported to be generally best in court hearings, compared to all other stages of the proceedings. Problems with judges' attitudes to interpretation were commented upon by respondents from several countries (**IE, PL**), and there were difficulties reported especially with the quality of simultaneous interpretation (**IE**). As with other stages of the criminal procedure, many Member States seem to struggle to provide interpreters with knowledge of legal terminology (**BG, CY, CZ, PL**) which can affect the quality of interpretation drastically. Throughout the criminal process and in many Member States, knowledge of legal terminology is a real cause of concern by the survey respondents.
96. **Conclusion:** Variances in quality between different stages of the criminal justice system create worrying threats to the protection of the right to a fair trial. Across the spectrum of the Member States covered by the survey, the quality of interpretation was below standard but improving with each stage of the criminal justice system (i.e. it was generally worst at the police station and best in court). Further incorporation of the Directive into national law, as mentioned above, may assist with the discrepancies in quality. Making the use of registered interpreters mandatory, for example, or ensuring that interpreters are available (and paid for by the State) for all necessary communication between lawyer and client, would help to enhance the quality throughout the legal process.

Right to Challenge and Remedies

97. The right to challenge poor quality interpretation and effective remedies have a twofold role in criminal proceedings. Firstly, they provide an incentive for all stakeholders in the criminal proceedings to control the quality of interpretation from the outset in order to avoid having to repeat lengthy elements of the proceedings or exclude hard-won valuable evidence. Secondly, they provide a safety net for the suspect and accused person by ensuring that the poor quality interpretation does not impact on the fairness of the overall proceedings. Accordingly, the Directive provides for the right to challenge the decision to not provide interpretation as well as for the right to complain about poor quality interpretation in Article 2(5). However, it does not prescribe the details of the procedures for such complaint mechanisms or the remedies which should follow, leaving Member States to develop these procedures in accordance with national law.
98. **Spain, the Czech Republic, Estonia and Ireland** have yet to transpose this requirement of the Directive adequately as their procedural codes currently do not provide for such challenges or complaints. In the Czech Republic and Ireland, however, this right does exist in practice, whereas in **Spain** there is no official procedure to challenge poor quality interpretation. In **Estonia**, the right to challenge poor quality interpretation is not explicitly provided for, but can be derived from other provisions.
99. Respondents from all other Member States affirmed that the right to challenge and complain about poor quality interpretation exists in law, but in two Member States, the remedies are at the discretion of the judge as the law does not clarify which remedies are available for a successful challenge (**LT, MT**). We were informed that in several Member States, the remedies for poor quality interpretation were limited to dismissing and replacing the current interpreter

(**BE, EL, HR, IE, LT**) without sufficient regard to the impact which the poor quality interpretation has had on the fairness of the proceedings. In some Member States, poor interpretation could lead to the interpreter losing their accreditation or being struck off the register (**BE, NL**) or to possible criminal liability (**LT**).

I know of a case in which the court asked the defendant “when were you born” and the answer was “Krakow” (the example is a true case but the city is fictional). In this case the interpreter was replaced.

Defence lawyer, LEAP Member, Portugal

100. Respondents from several Member States explained that the law does not provide for more comprehensive remedies and that evidence obtained with poor quality interpretation should be excluded from the case file and the respective procedure repeated (**BG, NL, PL, RO, SE**).
101. Even where a right to challenge poor quality interpretation exists, suspects and accused persons face problems in invoking the rights in practice. Challenges to poor quality interpretation are difficult or almost impossible to raise effectively (**CY, CZ, EE, HR, IT, LT, PL, PT, EL**), partly because it is hard to provide evidence of poor quality interpretation due to the lack in most Member States of any objective record (such as that provided by audio-visual recording) against which the quality of interpretation can be assessed.
102. A further difficulty raised by one respondent was the lack of information available about making a complaint or challenge regarding the quality of interpretation (**EE**). This results in few challenges being made against poor quality interpretation in **Estonia** because most suspects and accused persons are not aware of the possibility or procedure. The **Spanish** respondent to the survey added that complaints about the quality of the interpretation can antagonise the court and might therefore not be brought forward.
103. **Conclusion:** The survey has highlighted that the obligation which the Directive imposes on Member States to have a mechanisms by which suspects and accused persons may challenge poor quality interpretation has been inadequately implemented at the national level. While many Member States have some form of complaints procedure in place, further clarification of these procedures is required to accelerate the improvement of the quality of interpretation and to ensure the protection of the rights of non-national suspects and accused persons. Clearly articulated complaints procedures supported by remedies which ensure the fairness of the proceedings must be adopted and implemented. While the replacement of a poor quality interpreter provides a short-term solution, and prevents further damage from being done, this will not in many cases serve as an adequate remedy and safeguard the fair trial rights of the suspect and accused person.

VI. Recommendations to the EU institutions and others

104. While the results of the survey are not exhaustive, it is nevertheless hoped that it provides a helpful picture of the challenges Member States are facing in ensuring the quality of interpretation in criminal proceedings.

105. We urge different actors involved in the implementation process to take the matter forward as follows:

- We encourage the **European Commission** to publish its long-awaited implementation report on the Directive which was due to be published on 27 October 2014. We hope that the report will examine the extent to which Member States have complied with the obligation to ensure that interpretation provided in criminal proceedings is of sufficient quality, with implementation in practice as well as in law taken fully into account. The **European Commission** could also publish examples of good practice in Member States, thereby guiding implementation efforts by other Member States.
- The **European Commission** must be prepared to carry out infringement procedures if necessary to address the provision of poor quality interpretation in criminal proceedings.
- **EU Member States** must ensure they transpose the quality requirements of the Directive into national law, to ensure that the aim of the Directive will be achieved in all criminal proceedings.
- All **Member States** should consider developing a register of qualified interpreters, or reforming existing registers as necessary, with entry requirements which are sufficiently stringent to ensure that the quality of interpretation is sufficient to safeguard the fairness of criminal proceedings.
- **Member States** should consider the introduction of audio-visual recording of all interrogations, but particularly those which involve interpretation, to ensure that an objective record of interpretation is secured against which quality can subsequently be assessed.
- In line with the Directive, **Member States** should provide a mechanism according to which the quality of interpretation can be challenged, with associated remedies which are sufficient to ensure that the fairness of the proceedings is protected.
- **Member States** are welcome to contact Fair Trials via the contacts above if they wish to discuss the content of this report. In particular, we are happy to organise meetings with Fair Trials staff, the LEAP Advisory Board member for the Member State in question and the Permanent Representation in Brussels, subject to capacity.
- We recommend that **defence lawyers** familiarise themselves with the provisions and rights under the Directive and acquire a strong understanding of how to invoke these in national courts.³² Wherever possible, they should seek out training opportunities to optimise their ability to work with an interpreter in criminal proceedings. The LEAP Toolkit on the Directive provides some initial guidance.

³² The Fair Trials toolkit provides insight over the rights under the Directives and how to invoke them: Fair Trials, Toolkit on the Interpretation and Translation Directive, March 2015, available at: <https://www.fairtrials.org/wp-content/uploads/Language-Rights-Toolkit-FINAL.pdf>.

- **Defence lawyers** are welcome to use the comparative information in this report to inform their courts of approaches in other Member States, and to approach LEAP or Fair Trials staff for litigation support. In addition, lawyers should seek out,
- **Bar associations** should continue the work they are already doing to promote use of the Directive or, if they are not doing so, provide programmes to help lawyers challenge problems arising in practice. Fair Trials and LEAP are keen to cooperate.
- **National courts** should, where necessary, interpret provisions relating to interpretation in line with the Directive and ensure that these are not applied at the expense of quality of interpretation sufficient for the suspected and accused person to exercise their right to a fair trial.
- **National courts** should be mindful of the need for good quality interpretation to be provided not only in court hearings but also during pre-trial proceedings and, in line with ECtHR jurisprudence, exercise retrospective control over this by verifying the quality of previous interpretation and evidence produced at this state.
- We encourage **national courts** to further consider what can be done to improve the quality of interpretation (including being responsive to challenges to the quality of interpretation) and, where necessary, make preliminary references to the CJEU in order to obtain clarification on the interpretation of the provisions of the Directive.
- **Academics** can help complete the picture sketched in this report with analyses of statistical data, jurisprudence of the courts relating to the relevant provisions of national procedures and constitutional provisions, and how these relate to the Directive.
- **NGOs** are encouraged to use the information in this report in their domestic advocacy targeted at parliaments and governments and/or strategic litigation. Fair Trials and LEAP are happy to consider cooperating with such initiatives. It would also be useful for the realisation of the aims of the Directive for NGOs to consider the possibility of providing training to lawyers and interpreters on working in criminal proceedings where the suspect and accused person does not speak the local language.

Legal Experts Advisory Panel

March 2016

Annex: Survey Questionnaire

Quality of Interpretation: Questionnaire

By 27 October 2013 Directive 2010/64/EU on the Right to interpretation and translation in criminal proceedings (the '**Directive**') should have been transposed into national law. This measure governs suspected and accused persons' right to interpretation in police interviews, hearings and in meetings with their lawyer, and their right to translation of essential documents.

Article 2 requires interpretation to be provided to those suspects or accused persons "who do not speak or understand the language" before judicial authorities and during police questioning, as well as for communication between them and their lawyer in connection with any questioning, hearing or appeal. Article 2 also provides for the right to challenge the quality of the interpretation provided. Article 5 obliges Member States to a) take "concrete measures" to ensure interpretation meets the standards required and b) "endeavour" to establish a register of appropriately qualified interpreters.

We would like to hear about your experience with regards to the quality of interpretation (oral interpretation of oral communications). We're also keen to know if and how far the provisions of the Directives have been transposed into domestic law and are being applied in practice.

1. What provisions (i.e. name of law and article/paragraph number) of national law govern the quality of interpretation? Please summarise the specific rules.
2. Have there been any changes to the legal framework on interpretation in order to implement the Interpretation and Translation Directive?
3. a) What concrete measures, if any, ensure that the quality of interpretation is sufficient to safeguard the fairness of the proceedings?

b) Has a "register" of accredited interpreters been introduced? What are the criteria for being listed on the register?

c) How effective are these mechanisms?
4. Based on your practical experience, how would you rate the quality of interpretation
 - a) At the police station?
 - b) During meetings with the lawyer?
 - c) During investigative acts?
 - d) During court hearings?
5. Does the quality of interpretation vary between different stages of the proceedings? For example, is there any difference in quality between the interpretation provided at the police station, and the interpretation provided in the court?
6. Can you tell us about any cases in which your client was provided with poor quality interpretation and how it impacted on the fairness of the proceedings?

7. Is training available or even compulsory for defence lawyers on working with interpreters?
8. Can you detect if an interpreter is interpreting badly? How?
9.
 - a) Can suspects or accused persons effectively challenge the provision of poor quality interpretation?
 - b) How and in what context are such challenges made?
 - c) How accessible do you consider this system to be?
10. What remedies are available (if any) if the quality of interpretation of found to have been insufficient? Are they effective?
11. What changes do you consider to be necessary to ensure better quality of interpretation, if any?