

## *Submission Template*

# **The right to interpretation and translation and the right to information in criminal proceedings in the EU**

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# QUESTIONS

As envisaged in the section on Research Methodology, please note that some questions require consultation with organisations and/or practitioners working in relevant fields covered by the research to cross-check findings from the desk research with respect to the way in which the examined rights are applied in practice (such as judges, lawyers, interpreters and translators or civil society organisations active in the field of legal assistance in criminal proceedings).

## Article I. SECTION A: The right to interpretation and translation in criminal proceedings

1.	RIGHT TO INTERPRETATION <sup>1</sup>	Brief Description
1.1	<p><b>Please provide answers to the following for each stage of proceedings as indicated below:</b></p> <p>a) Who has the responsibility for determining the need of interpretation at each stage of the proceedings?</p> <p>b) How it works in practice for the various stages of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</p> <p>c) Who bears the cost of interpretation at each stage?</p> <p>d) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</p> <p><b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	
	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) According to the Act on the use of languages in judicial proceedings, the officers in charge of the investigation or questioning who cannot understand the language of the person interviewed must call on the assistance of a sworn interpreter.<sup>2</sup> This rule applies at every stage of the proceedings, from pre-trial investigation (e.g. police questioning) to court hearings. In practice, the police officer proceeding</p>

<sup>1</sup> See in particular Art. 2 and Art. 4 and related recitals of Council Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

<sup>2</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire/Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 31.

1.1.1		<p>to the interview will assess if the person questioned is able to understand and speak the language of the proceedings. If not, an interpreter will be appointed. Common sense and good judgment must thus be exercised in practice.<sup>3</sup></p> <p>Any party to the proceedings who does not understand the language of the proceedings is assisted by a sworn interpreter who is responsible for translating all oral statements during all questioning within the framework of judicial proceedings. Therefore, the person questioned has the right to request an interpreter to the police services if the police officer has not call on the assistance of an interpreter.<sup>4</sup></p> <p>In addition, the person questioned by the police, or by the judicial service, has the right to respond in a language other than the language of the proceedings. Either the person questioned requests an interpreter, or his/her oral statements are written down in the report in the person's language (if the police officer understands the person's language), or the person him/herself writes down his/her statements in his/her own language.<sup>5</sup></p> <p>b) Nothing has been identified in the legislation or by-laws. The legal provisions refer only to situations where the suspect does not understand the language of the proceedings, they do not define how to ascertain whether or not a person is entitled to have an interpreter. If the accused or suspected person is Belgian, it is common practice to verify first in the national register about information on the languages spoken. Secondly, a database consultation can help the police officer if previous hearings took place. It is noted that an interpreter will rarely be appointed in case of minor cases, contrary to serious cases.<sup>6</sup></p> <p>c) As suspects or accused persons have the right to make oral statements in the language of their choice, when interpretation in any languages is requested at the police questioning phase,, the costs of interpretation are borne by the State.<sup>7</sup></p>
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<sup>3</sup> Belgium, representative of the Brussels Judicial Police.

<sup>4</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire/Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 31. All the legislation is available at [www.ejustice.just.fgov.be/loi/loi.htm](http://www.ejustice.just.fgov.be/loi/loi.htm) or [www.ejustice.just.fgov.be/loi/loi.htm](http://www.ejustice.just.fgov.be/loi/loi.htm). All hyperlinks were accessed on 15 May 2015.

<sup>5</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>6</sup> Belgium, representative of the Brussels Judicial Police.

<sup>7</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Arts. 22 and 31. Belgium, [Royal Decree on the general regulation of judicial costs in criminal matters](#) (*Arrêté royal portant règlement général des frais de justice en matière répressive/ Koninklijk besluit houdende algemeen reglement op de gerechtskosten in strafzaken*), 27 April 2007, Art. 69.

		d) The legislation sets no time limit on interpretation provided during police questioning.
1.1.2	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) If Public Prosecutor or the investigating judge (and all subsequent judges) cannot understand the language of the person questioned, they must call on the assistance of a sworn interpreter.<sup>8</sup> This rule applies at every stage of the proceedings, from pre-trial investigation to court hearings and any interim hearings.</p> <p>With regard to the specific procedure before the court of assizes, Article 282 of the Code of Criminal Procedure states that if the accused person, the suspect, the witness, or the civil party bringing the action, do not speak the language of the proceedings, the President of the Court must appoint an interpreter. Although this provision refers only to the proceedings before the court of assizes, case law<sup>9</sup> and the legal literature<sup>10</sup> agree on the general application of this provision.</p> <p>The trial judge must determine whether or not the defendant knows the language of the proceedings.<sup>11</sup> He/she is required to make an assessment, e.g. evaluating the difficulties that may be encountered by the accused if the right to interpretation is denied.<sup>12</sup> If the suspected or accused person does not understand the language of the proceedings, an interpreter is appointed, even if the person does not request it.<sup>13</sup> In practice, the accused or suspected person is being asked in which language he/she wants to speak. If the chosen language does not correspond to the language of the proceedings, an interpreter must be assigned. No difficulties have been noted in practice.<sup>14</sup></p> <p>b) In Belgium, the language of the proceedings is regulated by the Act on the use of languages in judicial proceedings<sup>15</sup> which allows for some complex rules, due to the specificities of the language policy in different parts of Belgium. According to Chapter 2 of the Act, the</p>

<sup>8</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire/Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 31.

<sup>9</sup> Belgium, Court of Cassation (*Cour de cassation / Hof van Cassatie*), Arr. Cass., 1989-1990, n°405, 6 March 1990.

<sup>10</sup> Franchimont, M., Jacobs, A., Masset, A. (2012), *Manuel de procédure pénale*, Bruxelles, Larcier, p. 1310.

<sup>11</sup> Belgium, Court of Cassation (*Cour de cassation / Hof van Cassatie*), Arr. Cass., 1996, n°4, 2 January 1996.

<sup>12</sup> Franchimont, M., Jacobs, A., Masset, A. (2012), *Manuel de procédure pénale*, Bruxelles, Larcier, pp. 1309-1311.

<sup>13</sup> Belgium, Court of Cassation (*Cour de cassation / Hof van Cassatie*), Arr. Cass., 1989-1990, n°405, 6 March 1990.

<sup>14</sup> Belgium, legal practitioner and representative of the Liège Bar.

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

	<p>language of the proceedings will be French, Dutch, or German, depending on where the proceedings are initiated, i.e. in the French Community, in the Flemish Community, or in the German Community. In some specific judicial districts, if all parties agree, a request can be made to have the proceedings in one or other of the national languages (French or Dutch).</p> <p>The situation in the Region of Brussels (bilingual area), which is divided into Dutch-speaking and French-speaking judicial districts, is more complicated. The language of the proceedings is determined by the residence of the accused or the suspected person (either French or Dutch). For example, if the person resides in a unilingual French area, the language of the proceedings will be French. If the person resides in a unilingual Dutch area, the language of the proceedings will be Dutch. However, if the accused or suspected person is domiciled in the Brussels Region (<i>agglomération de Bruxelles</i>), he/she can choose whether to bring proceedings in Dutch or in French. The language of the proceedings will usually be the one in which the legal proceedings have commenced.</p> <p>In practice, the accused or suspected person is being asked in which language he/she wants to speak. If the chosen language does not correspond to the language of the proceedings, an interpreter must be assigned. No difficulties have been noted in practice.<sup>16</sup></p> <p>c) For court hearings, the costs of interpretation for any languages are borne by the State.<sup>17</sup> The legislation stipulates the costs of interpreters and translators, based on the language of interpretation and the length of time involved.<sup>18</sup></p> <p>d) The legislation sets no deadlines for providing interpretation during court hearings.</p>
<ul style="list-style-type: none"> <li>any necessary interim hearings;</li> </ul>	<p>a) According to the Act on the use of languages in judicial proceedings, the judicial officers or judges who cannot understand the language of the person heard must call on the assistance of a sworn interpreter.<sup>19</sup> This rule applies at every stage of the proceedings,</p>

<sup>16</sup> Belgium, legal practitioner and representative of the Liège Bar.

<sup>17</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Arts. 22 and 31.

<sup>18</sup> Belgium, [Royal Decree on the general regulation of judicial costs in criminal matters](#) (*Arrêté royal portant règlement général des frais de justice en matière répressive/ Koninklijk besluit houdende algemeen reglement op de gerechtskosten in strafzaken*), 27 April 2007, Art. 69.

<sup>19</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire/Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 31.

1.1.3		including interim court hearings. In the case of necessary interim hearings, the judge is responsible for calling on the assistance of a sworn interpreter if he/she cannot understand the language of the person questioned. <sup>20</sup>
		b) In practice, if the accused or suspected person has been assisted by an interpreter during the first hearings, he/she is still entitled to be assisted by the interpreter during all related proceedings. <sup>21</sup>  In practice, the accused or suspected person is usually (as there is no legal basis for this) asked in which language he/she wants to speak. If the chosen language does not correspond to the language of the proceedings, an interpreter must be assigned. No difficulties have been noted in practice. <sup>22</sup>
		c) The costs of interpretation in any languages for any interim hearings are borne by the State. <sup>23</sup>
		d) The legislation sets no deadlines for providing interpretation during any necessary interim hearings.
1.1.4	<ul style="list-style-type: none"> <li>any communication between suspects and accused persons and their legal</li> </ul>	a) If the suspected or accused person in need of interpretation qualifies for legal aid, the legal aid service will assign a legal counsel who speaks the native language of the suspected or accused person, or another language that the person speaks. Therefore, no sworn interpreters will be assigned in this case <sup>24</sup> If no legal counsel who speaks the person's native language or another language that the person speaks can be assigned, the legal aid service will instead assign an interpreter. However, the legal aid system only covers the

<sup>20</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire/Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 31.

<sup>21</sup> Belgium, legal practitioner and representative of the Liège Bar.

<sup>22</sup> Belgium, legal practitioner and representative of the Liège Bar.

<sup>23</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Arts. 22 and 31.

<sup>24</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 184 bis.

<p>counsel in direct connection with any questioning or hearing during the proceedings</p>	<p>services of an interpreter for three hours. Questions have been raised as to whether this time limit is in line with the European Convention of Human Rights.<sup>25</sup></p> <p>There are two forms of legal aid: primary and secondary legal aid. Primary legal aid consists of initial legal advice or referral to a specialised organisation, which is accessible to everyone and is free of charge. It is offered in each judicial district at the House of Justice and at the Commission of Legal Aid where lawyers hold weekly legal aid hours. Secondary legal aid consists of legal assistance of a legal counsel partly or fully free of charge, depending on certain conditions (such as low income or persons under certain status such as asylum seekers).<sup>26</sup></p> <p>Outside of this case, there is no legal requirement to appoint an interpreter solely for communication between legal counsel and accused or suspected person. The person would in such case need to bear the costs of interpretation.</p> <p>The only exception concerns mandatory consultation with a legal counsel prior to the first questioning (introduced by the Salduz Act in 2011).<sup>27</sup> Suspected persons who are not deprived of their liberty but are questioned on facts that can lead to the issuance of an arrest warrant and persons deprived of their liberty have the right to consult confidentially with a legal counsel.<sup>28</sup> As regards the right to interpretation, if the person concerned wants to speak in a language other than the language of the proceedings, police officers will inform</p>
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<sup>25</sup> Belgium, Senate, Request of explanation (No 3-493) to the Minister of Justice on the right to free assistance of an interpreter (*Demande d'explications de Mme Clotilde Nyssens à la Vice-première Ministre et Ministre de la Justice sur «le droit à l'assistance gratuite d'un interprète»* (n° 3-493)), 22 December 2004, available at: [www.senate.be/www/?Mlval=publications/viewPub&COLL=H&PUID=50333251&TID=50338322&POS=1&LANG=fr](http://www.senate.be/www/?Mlval=publications/viewPub&COLL=H&PUID=50333251&TID=50338322&POS=1&LANG=fr).

<sup>26</sup> Ministry of Justice, *Un meilleur accès à la justice*, available at [http://justitie.belgium.be/nl/binaries/Un%20meilleur%20acc%C3%A8s%20%C3%A0%20la%20justice\\_tcm265-142580.pdf](http://justitie.belgium.be/nl/binaries/Un%20meilleur%20acc%C3%A8s%20%C3%A0%20la%20justice_tcm265-142580.pdf).

<sup>27</sup> Belgium, [Act amending the Code of Criminal Procedure and the Preventive Detention Act in order to confer rights to persons questioned and persons deprived of liberty, among the right to consult a legal counsel](#) (*Loi modifiant le Code d'instruction criminelle et la loi du 20 juillet 1990 relative à la détention préventive afin de conférer des droits, à toute personne auditionnée et à toute personne privée de liberté dont le droit de consulter un avocat et d'être assistée par lui (cité comme loi Salduz) / Wet tot wijziging van het Wetboek van strafvordering en van de wet van 20 juli 1990 betreffende de voorlopige hechtenis, om aan elkeen die wordt verhoord en aan elkeen wiens vrijheid wordt benomen rechten te verlenen, waaronder het recht om een advocaat te raadplegen en door hem te worden bijgestaan (aangehaald als : wet Salduz)*).

<sup>28</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis and Belgium, [Act on provisional detention](#) (*Loi relative à la détention préventive / Wet betreffende de voorlopige hechtenis*), 20 July 1990, Art. 2 bis.

		<p>the legal counsel of this choice. The legal counsel who can speak this language will assist the suspected person on his/her own or a sworn interpreter will be appointed.<sup>29</sup></p>
		<p>b) Nothing has been identified in the legislation. In practice, if the suspected or accused person qualifies for legal aid, the legal counsel who cannot speak the language of the person will request an interpreter to the legal aid office<sup>30</sup> or hire an interpreter if (s)he does not qualify for legal aid.</p>
		<p>c) If the suspected or accused person in need of interpretation qualifies for legal aid, the legal aid service will assign freely a legal counsel who speaks the native language of the suspected or accused person, or another language that the person speaks.<sup>31</sup> If no legal counsel can be assigned who speaks the person's native language or another language that the person speaks, the legal aid service will instead assign an interpreter. However, the legal aid system only covers the services of an interpreter for three hours. Questions have been raised as to whether this time limit is in line with the European Convention of Human Rights.<sup>32</sup></p> <p>If the person does not qualify for legal aid and requests an interpreter for communications with his/her legal counsel, costs are borne by the person and not by the State<sup>33</sup>, except for the mandatory consultation with a legal counsel in the context of the Salduz Act, as mentioned above.<sup>34</sup></p>
		<p>d) The legislation sets no deadlines for providing interpretation at this stage of the proceedings.</p>

<sup>29</sup> Belgium, Circular 8/2011 on the organisation of the assistance of a legal counsel from the first questioning in criminal proceedings ([Circulaire 8/2011 relative à l'organisation de l'assistance d'un avocat dès la première audition dans le cadre de la procédure pénale belge / Richtlijn 8/2011 inzake de organisatie van de bijstand door een advocaat vanaf het eerste verhoor binnen het kader van het Belgisch strafprocesrecht](#)), 13 June 2013.

<sup>30</sup> Belgium, legal aid office.

<sup>31</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 184 bis.

<sup>32</sup> Belgium, Senate, Request of explanation (No 3-493) to the Minister of Justice on the right to free assistance of an interpreter (*Demande d'explications de Mme Clotilde Nyssens à la Vice-première Ministre et Ministre de la Justice sur «le droit à l'assistance gratuite d'un interprète» (n° 3-493)*), 22 December 2004, available at: [www.senate.be/www/?Mlval=publications/viewPub&COLL=H&PUID=50333251&TID=50338322&POS=1&LANG=fr](http://www.senate.be/www/?Mlval=publications/viewPub&COLL=H&PUID=50333251&TID=50338322&POS=1&LANG=fr).<sup>33</sup> Belgium, legal aid officer.

<sup>33</sup> Belgium, legal aid officer.

<sup>34</sup> Belgium, Circular 8/2011 on the organisation of the assistance of a legal counsel from the first questioning in criminal proceedings ([Circulaire 8/2011 relative à l'organisation de l'assistance d'un avocat dès la première audition dans le cadre de la procédure pénale belge / Richtlijn 8/2011 inzake de organisatie van de bijstand door een advocaat vanaf het eerste verhoor binnen het kader van het Belgisch strafprocesrecht](#)), 13 June 2013.

1.2	<p>How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters exist? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>Under the current legislation, there is no centralised official database or register of translators and interpreters in Belgium. Anyone can be a “sworn interpreter” after having taken an oath. Each interpreter/translator is appointed for a specific mission<sup>35</sup> each of which requires the swearing of an oath. Authorities have no choice but to use non-certified, independent interpreters, particularly in the cases of interpretation of less widely spoken languages.<sup>36</sup></p> <p>In 2017, the new Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters<sup>37</sup> will come into effect, after which time only registered translators and interpreters may be appointed. To ensure interpretation into rare/lesser-known languages, an exemption to this rule will be provided for, so that cases where no registered translators or interpreters can be found for a particular language, the judicial authority may instead appoint an interpreter or translator not listed in the register (by a reasoned decision).<sup>38</sup></p>
1.3	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no interpretation is needed? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or</b></p>	<p>Article 6 of the European Convention on Human Rights promotes the right to a fair trial, and inter alia the right of the person charged with a criminal offence to be freely assisted by an interpreter if he/she cannot understand or speak the language of the proceedings. As the Convention is directly applicable in Belgium, it can be invoked before national courts. In the case where the authority assesses that there is no need for interpretation, an appeal against this decision could be initiated on the basis of Article 6 of the Convention.</p> <p>Under current legislation, there is no specific procedure to ensure a right to challenge this kind of decision. The common procedure is used, i.e. through an appeal or a cassation complaint on the basis of an infringement of the rights of the defence.<sup>39</sup></p> <p>In practice, it is very rare to deny the right to interpretation to the suspected or accused person. If the latter is in need of an interpreter, the competent authority (judge, police officer, legal practitioner) will usually accept his/her request. In the case where the suspected or accused person would not have requested an assistance at the very beginning of the proceedings, i.e. the person has been heard and</p>

<sup>35</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

<sup>36</sup> Institut de Management et de Communication Interculturels, Charles University in Prague, Fachhochschule Köln, Heriot-Watt University Edinburgh, Lessius University College Antwerp, Università di Bologna sede di Forlì (2011-2012), *ImPLI – Improving Police and Legal Interpreting*, Brussels, European Commission Directorate-General Justice, available at: [www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI\\_Final\\_Report.pdf](http://www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI_Final_Report.pdf).

<sup>37</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators, interpreters and sworn translators and interpreters \(Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken\)](#), 10 April 2014.

<sup>38</sup> Idem, Art. 27.

<sup>39</sup> On the specific appeal procedure (and cassation complaint), see Belgium, Judicial Code (*Code judiciaire / Gerechtelijn wetboek*), 1967, Arts. 1050-1121.

	<b>practitioners.</b>	has been able to read documents in the language of the proceedings, the judge could deny his/her request. Challenging the decision of refusal to appoint an interpreter is extremely rare in practice. <sup>40</sup>
1.4	With regard to remote interpretation via communication technologies :	
	a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?	<p>Article 10 of the Council Act of 29 May 2000 (established in accordance with Article 34 of the Treaty on European Union on the convention on mutual assistance in criminal matters between the Member States of the European Union<sup>41</sup>) concerns hearings by videoconference. Belgium ratified the Convention on 11 May 2005.<sup>42</sup> The Convention, therefore, directly applies in Belgium and can be invoked in courts. No additional provisions exist under any other Belgian national legislation.</p> <p>In principle, communication technologies may be used at all stages of criminal proceedings (pre-trial hearings, first hearings, bail and demand hearings).<sup>43</sup></p> <p>In practice, communication technologies are rarely used. Videoconference is sometimes used, but this use is quite limited. In fact, using communication technologies may increase the likelihood of difficulties such as misunderstandings linked to the rarity of the languages, or</p>

<sup>40</sup> Belgium, legal practitioners.

<sup>41</sup> Council Act of 29 May 2000 establishing, in accordance with Article 34 of the Treaty on European Union, the Convention on mutual assistance in criminal matters between the Member States of the European Union, OJ 2000 C 197.

<sup>42</sup> Belgium, [Act approving the Convention, established by the Council in accordance with Article 34 of the Treaty on European Union, on mutual assistance in criminal matters between the Member States of the European Union and the Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) (*Loi portant assentiment à la Convention, établie par le Conseil conformément à l'article 34 du Traité sur l'Union européenne, relative à l'entraide judiciaire en matière pénale entre les Etats membres de l'Union européenne, faite à Bruxelles le 29 mai 2000 et au Protocole à la Convention relative à l'entraide judiciaire en matière pénale entre les Etats membres de l'Union européenne, établi par le Conseil conformément à l'article 34 du Traité sur l'Union européenne, fait à Luxembourg le 16 octobre 2001 / Wet houdende instemming met de Overeenkomst, door de Raad vastgesteld overeenkomstig artikel 34 van het Verdrag betreffende de Europese Unie, betreffende de wederzijdse rechtshulp in strafzaken tussen de lid-Staten van de Europese Unie, gedaan te Brussel op 29 mei 2000 en het Protocol vastgesteld door de Raad overeenkomstig artikel 34 van het Verdrag betreffende de Europese Unie, bij de Overeenkomst betreffende de wederzijdse rechtshulp in strafzaken tussen de lid-Staten van de Europese Unie, gedaan te Luxemburg op 16 oktober 2001*), 11 May 2005.

<sup>43</sup> Braun, S., Taylor, J. L. (2011), 'Video-mediated interpreting in criminal proceedings: two European surveys' in Braun, S., Taylor, J. L. (eds.), *Videoconference and remote interpreting in criminal proceedings*, Guildford, University of Surrey, p. 64.

	<p>specific cultural challenges (for instance, the need to speak face-to-face and not via telephone). Judicial proceedings often require the use of many documents, making remote communications complicated.<sup>44</sup></p>
<p>b) Which technologies are used, if any (videoconference, telephone, internet, etc)</p>	<p>In 2011, two surveys were conducted in some European Union Member States to gain an overview of how video-mediated interpreting is used in criminal proceedings. This project, called Avidicus, revealed that videoconference interpreting and remote interpreting are used in Belgium but the frequency of this use remains unknown.<sup>45</sup> According to another report<sup>46</sup>, the use of communication technologies is very limited in Belgium.</p> <p>Three jurisdictions are currently using videoconference technologies: Court of Appeal of Antwerp, Court of First Instance of Hasselt, and the Federal Prosecutor's office in Brussels.<sup>47</sup> HD cameras and overview cameras are available for use.</p> <p>According to the Chamber of Translators and Interpreters, videoconference is sometimes used. Using telephones, however is more risky and should, therefore, be avoided.<sup>48</sup></p>

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<sup>44</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

<sup>45</sup> Braun, S., Taylor, J. L. (2011), 'Video-mediated interpreting in criminal proceedings: two European surveys' in Braun, S., Taylor, J. L. (eds.), *Videoconference and remote interpreting in criminal proceedings*, Guildford, University of Surrey, p. 62.

<sup>46</sup> Institut de Management et de Communication Interculturels, Charles University in Prague, Fachhochschule Köln, Heriot-Watt University Edinburgh, Lessius University College Antwerp, Università di Bologna sede di Forlì (2011-2012), *ImPLI – Improving Police and Legal Interpreting*, Brussels, European Commission Directorate-General Justice, available at: [www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI\\_Final\\_Report.pdf](http://www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI_Final_Report.pdf).

<sup>47</sup> Information available at: [https://e-justice.europa.eu/content\\_information\\_on\\_national\\_facilities-319-be-en.do?clang=fr](https://e-justice.europa.eu/content_information_on_national_facilities-319-be-en.do?clang=fr).

<sup>48</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

<p>c) Do competent authorities rely on the tools developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment provided on the European e-Justice Portal)? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>According to the European e-justice website, three jurisdictions are currently using videoconference technologies: Court of Appeal of Antwerp, Court of First Instance of Hasselt, and the Federal Prosecutor's office in Brussels.<sup>49</sup> HD cameras and overview cameras are available for use.</p> <p>In 2002, a few pilot projects were launched in Charleroi and Leuven prisons. Videoconference for appearance before the Council chamber (<i>Chambre du conseil / Raadkamer</i>) could be used with the approval of the suspected or accused person. But in 2003, the Criminal Division (<i>Chambre des mises en accusation / Kamer van inbeschuldigingstelling</i>) ruled that use of videoconference cannot replace personal appearance of the person.<sup>50</sup> Therefore, these pilot projects were suspended.</p> <p>Currently, one videoconference project is ongoing. It is implemented at the Court of Appeal of Antwerp but only for civil matters. Legal counsels from Limburg can thus avoid travelling to Antwerp. The Federal Prosecutor is also considering the implementation of this project for all international consultations.<sup>51</sup> It is noted that a proposed law is currently pending. It aims at introducing videoconference as part of preventive detention. The arguments put forward are reduction of costs in the transportation of the accused person and reduction of risks linked to the transportation.<sup>52</sup></p>		
<p><b>TRAINING<sup>53</sup></b></p>	<p><b>Yes</b></p>	<p><b>No</b></p>	<p><b>Brief Description</b></p>
<p><b>1.5</b> Are providers of judicial training requested to pay special attention to the particularities of communicating with the assistance of an interpreter so</p>	<p>Yes</p>		<p>There is no legal requirement in this respect. In practice, an entire day of training session is usually dedicated to criminal proceedings in bar courses, which any legal counsel must attend in order to be admitted to the bar. From the arrestation of the suspected or accused person and the hearing of the examining judge to the sentencing decision, each aspect of the criminal proceedings is presented by actual legal practitioners and judges. The different training's steps depend on the knowledge of the trainee lawyers and on the speakers' experience. During the training, they are at least</p>

<sup>49</sup> Information available at: [https://e-justice.europa.eu/content\\_information\\_on\\_national\\_facilities-319-be-en.do?clang=fr](https://e-justice.europa.eu/content_information_on_national_facilities-319-be-en.do?clang=fr).

<sup>50</sup> Belgium, Criminal Decision (*Chambre des mises en accusation / Kamer van inbeschuldigingstelling*), Mons, 10 April 2003.

<sup>51</sup> Belgium, representative of the Federal Public Service Justice.

<sup>52</sup> Belgium, Proposal on the use of videoconference for the accused's appearance in preventive detention (*Proposition de loi relative à l'utilisation de la vidéoconférence pour la comparution d'inculpés en détention préventive / Wetsvoorstel betreffende het gebruik van videoconferentie voor de verschijning van in verdenking gestelden in voorlopige hechtenis*), 26 March 2015.

<sup>53</sup> See in particular Art. 6 and relevant recitals of Council Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

	as to ensure efficient and effective communication? If yes, briefly provide details.			taught about the right of the suspected or accused person to be assisted by an interpreter or a translator if the person cannot speak or understand the language of the proceedings. However, no particular tips or methods are taught to the trainee lawyers about this right, except in the case where a speaker shares his/her expertise. The general principle is only mentioned and described, without any further development. <sup>54</sup>
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<sup>54</sup> Belgium, representative of the Liège Bar.

2.	RIGHT TO TRANSLATION OF DOCUMENTS <sup>55</sup>	Brief Description
2.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</p>	
2.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) As mentioned above, the language of the proceedings is regulated by the Act on the use of languages in judicial proceedings<sup>56</sup> with some complex rules due to the specificities of the language policies in the different parts of Belgium. The accused person may request a translation of any police records, statements from witnesses or plaintiffs, and expert reports in the Belgian national language (French, Dutch or German) he/she understands.<sup>57</sup> It is noted that this provision only refers to the accused person, and thus does not apply to the suspected person.</p>

<sup>55</sup> See in particular Art. 3 and Art. 4 and relevant and relevant recitals of Council Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

<sup>56</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935.

<sup>57</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

		<p>The Act does not provide details about translation into any languages other than the three Belgian national languages. The language of the proceedings should not be confused with the language spoken by the person questioned. In Belgium, proceedings will always take place in one of the three Belgian national languages, depending on the jurisdiction (i.e. where the proceedings are initiated)<sup>58</sup>, but the person questioned can speak and request <b>interpretation</b> into other languages. For example, in Flanders, a suspected or accused person speaking Spanish will be assisted by an interpreter speaking both Spanish and Dutch (the languages spoken by the person and the language of the proceedings). However, if the assistance of an interpreter has been requested, the interpreter may verbally translate (part of) documents, albeit this is not foreseen by the law.<sup>59</sup></p> <p>In terms of written translation of documents (any procedural act and judgment), the Act on the use of languages in judicial proceedings only foresees translation in one of the three Belgian national languages, and not other languages. Each party has the right to request translation in other languages, but at his/her own costs.<sup>60</sup></p>
		<p>b) Translation costs in French, Dutch or German are borne by the State, i.e. the Federal Treasury,<sup>61</sup> whereby translation of documents's costs in any languages other than the three Belgian national language are at the person's own costs.<sup>62</sup></p> <p>c) The legislation sets no deadlines for the translation of documents during police questioning.</p>
<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>		<p>a) As mentioned above, if the accused does not understand the language of the proceedings, he/she may request a translation of any police records, statements from witnesses or plaintiffs, and expert reports in the national language he/she understands. For example, if</p>

<sup>58</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935.

<sup>59</sup> Belgium, representative of the Brussels Judicial Police and a legal practitioner; Article 31 of the [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935.

<sup>60</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 38 (10).

<sup>61</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

<sup>62</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 38 (10).

2.1.2

French is the language of the proceedings and the accused person only understands Dutch and/or German, he may request a translation of relevant documents in Dutch or German. In those cases, the costs are borne by the State.<sup>63</sup> It is noted that this provision only refers to the accused person, and thus does not apply to the suspected person.

In terms of written translation of documents (any procedural act and judgment) in other languages than one of the three Belgian national languages, the Act on the use of languages in judicial proceedings only foresees the right of each party to request translation in other languages, but at his/her own costs.<sup>64</sup> However, if the assistance of an interpreter has been requested, the interpreter may verbally translate (part of) documents, albeit this is not foreseen by the law.

The Court of Cassation (*Cour de cassation* / *Hof van Cassatie*) also ruled that translation under other conditions than those set in Article 22 of the Act on the use of languages in judicial proceedings<sup>65</sup> (translation in other languages for example) could occur in order to comply with the rights of the defence. The trial judge must therefore assess specific circumstances of the case.<sup>66</sup>

b) As mentioned above, translation costs in French, Dutch or German are borne by the State, i.e. the Federal Treasury,<sup>67</sup> whereby translation of documents's costs in any languages other than the three Belgian national language are at the person's own costs.<sup>68</sup>

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<sup>63</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / [Wet op het gebruik der talen in gerechtszaken](#)), 15 June 1935, Art. 22.

<sup>64</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / [Wet op het gebruik der talen in gerechtszaken](#)), 15 June 1935, Art. 38 (10).

<sup>65</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / [Wet op het gebruik der talen in gerechtszaken](#)), 15 June 1935, Art. 22.

<sup>66</sup> Belgium, Court of Cassation (*Cour de cassation* / *Hof van Cassatie*), P.07.1332.N., 18 December 2007, [http://jure.juridat.just.fgov.be/pdfapp/download\\_blob?idpdf=F-20071218-1](http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20071218-1), p. 6.

<sup>67</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / [Wet op het gebruik der talen in gerechtszaken](#)), 15 June 1935, Art. 22.

<sup>68</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / [Wet op het gebruik der talen in gerechtszaken](#)), 15 June 1935, Art. 38 (10).

		<p>c) The accused person must send a request to the public prosecution officer in charge, via the court's office, within eight days of being served the decision to refer the case to the court, or from receiving the subpoena.<sup>69</sup> However, the legislation sets no deadlines for providing the translation itself.</p>
2.1.3	<ul style="list-style-type: none"> <li>any necessary interim hearings;</li> </ul>	<p>a) As mentioned above, the language of the proceedings is regulated by the Act on the use of languages in judicial proceedings<sup>70</sup> with some complex rules due to the specificities of the language policies in the different parts of Belgium. If the accused person does not understand the language of the proceedings, he/she may request a translation of any police records, statements from witnesses or plaintiffs, and expert reports in the Belgian national language (French, Dutch or German) he/she understands.<sup>71</sup> It is noted that this provision only refers to the accused person, and thus does not apply to the suspected person. In terms of written translation of documents (any procedural act and judgment) in other languages than one of the three Belgian national languages, the Act on the use of languages in judicial proceedings only foresees the right of each party to request translation in other languages, but at his/her own costs.<sup>72</sup> However, if the assistance of an interpreter has been requested, the interpreter may verbally translate (part of) documents, albeit this is not foreseen by the law.</p> <p>The Court of Cassation (<i>Cour de cassation / Hof van Cassatie</i>) also ruled that translation under other conditions than those set in Article 22 of the Act on the use of languages in judicial proceedings<sup>73</sup> (translation in other languages for example) could occur in order to comply with the rights of the defence. The trial judge must therefore assess specific circumstances of the case.<sup>74</sup></p>

<sup>69</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

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

<sup>71</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

<sup>72</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 38 (10).

<sup>73</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

<sup>74</sup> Belgium, Court of Cassation (*Cour de cassation / Hof van Cassatie*), P.07.1332.N., 18 December 2007, [http://jure.juridat.just.fgov.be/pdfapp/download\\_blob?idpdf=F-20071218-1](http://jure.juridat.just.fgov.be/pdfapp/download_blob?idpdf=F-20071218-1), p. 6.

		<p>b) The translation costs are borne by the State, i.e. the Federal Treasury, but only for translation in Dutch, French or German, i.e. the three Belgian national languages, as mentioned above.<sup>75</sup></p> <p>c) The accused person must send a request to the public prosecution officer in charge, via the court's office, within eight days of receiving the subpoena.<sup>76</sup> However, the legislation sets no deadlines for providing the translation itself.</p>
2.1.4	<ul style="list-style-type: none"> <li>any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?</li> </ul>	<p>a) No legal provision has been identified with regard to the translation of documents for communications between the legal counsel and the suspects and accused persons. The legal counsel is responsible for informing the accused person about the essential documents of the proceedings and for explaining the legal proceedings.<sup>77</sup></p> <p>b) The legislation does not provide details on the translation of documents at this stage. If the suspected or accused person requests written translation of documents from communications with the legal counsel, he/she will bear the costs.<sup>78</sup></p> <p>c) No deadlines for the translation of documents at this stage of the proceedings are set in the legislation.</p>
2.2	<p>How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? <b>Please cross-</b></p>	<p>No legal provision has been identified with regard to the ways in which competent authorities ascertain whether an oral or written translation of essential documents is needed. The accused person can ask for the written translation of certain essential documents (procedural acts, judgments) in the Belgian national language (French, Dutch or German) he/she understands.<sup>79</sup> The legislation does not mention the possibility of an oral translation of an essential document. In addition, the legal counsel is responsible for informing the</p>

<sup>75</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

<sup>76</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

<sup>77</sup> Belgium, legal practitioner and professor at the Université of Liège.

<sup>78</sup> Belgium, legal practitioner and representative of the Brussels Bar.

<sup>79</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 38.

	<b>check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	suspected or the accused person about these essential documents, especially when the person is deprived of his/her liberty. In practice, an oral translation of other documents that those mentioned above will be provided. <sup>80</sup> In addition, the interpreter may translate (part of) documents.		
<b>2.3</b>	Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no translation is needed? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	<p>Article 6 of the European Convention on Human Rights promotes the right to a fair trial, and inter alia the right of the person charged with a criminal offence to be freely assisted by an interpreter if he/she cannot understand or speak the language of the proceedings. As the Convention is directly applicable in Belgium, it can be invoked before national courts. In the case where the authority assesses that there is no need for interpretation, an appeal against this decision should be initiated.</p> <p>Under current legislation, there is no specific procedure to ensure a right to challenge this kind of decision. In practice, it is very rare to deny the right to translation to the suspected or accused person. If the latter is in need of a translator, the competent authority (judge, police officer, legal practitioner) will usually accept his/her request. In the course of the investigations, the Public Prosecutor may deny the accused or suspected person's request if there is no doubt that he/she understands the language of the documents for which a translation is requested. Challenging decision about the refusal to appoint an interpreter is extremely rare in practice.<sup>81</sup></p>		
		<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
<b>2.4</b>	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?		No	<p>The legislation does not regulate this specific area. In practice, the interpreter may orally translates the documents that the suspected or accused person has to sign. Written translation is rarely provided.<sup>82</sup></p> <p>Depending on the language of the proceedings, the documents will be available or requested free of charge in one of the three Belgian national languages (French, Dutch or German). As mentioned above (2.1), the accused person may request a translation of any police records, statements from witnesses or plaintiffs, and expert reports in the Belgian national language (French, Dutch or German) he/she understands.<sup>83</sup> It is noted that this provision only refers to the</p>

<sup>80</sup> Belgium, legal practitioner and professor at the Université of Liège.

<sup>81</sup> Belgium, legal practitioners.

<sup>82</sup> Belgium, legal practitioner and representative of the Liège Bar.

<sup>83</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire / Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

				accused person, and thus does not apply to suspected persons. The Act on the use of languages in judicial proceedings only foresees translation in one of the three Belgian national languages, and not other languages. Each party has the right to request translation in other languages, but at his/her own costs. <sup>84</sup>
<b>2.5</b>	Is it possible to waive the right to translation of documents and if so, what form can it have and under which conditions can it be accepted?	Yes		<p>A translation's request must fall under the conditions set out in the Act on the use of languages in judicial proceedings.<sup>85</sup> The accused person must send a request to the public prosecution officer in charge via the court's office.</p> <p>If the accused or questioned person does not request a translation within the time provided by law, he/she is considered to have renounced his/her right to translation.<sup>86</sup> As mentioned above, the accused person must send a request to the public prosecution officer in charge, via the court's office, within eight days of being served the decision to refer the case to the court, or from receiving the subpoena.<sup>87</sup></p>

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<sup>84</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 38 (10).

<sup>85</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

<sup>87</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire* / *Wet op het gebruik der talen in gerechtszaken*), 15 June 1935, Art. 22.

3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION <sup>88</sup>			
3.1	With regard to use of registers of interpreters and translators in EU Member States:	Yes	No	Brief Description
	a) Do national databases or registers exist for legal translators and interpreters?		No	<p>There is currently no centralised official database or register of translators and interpreters in Belgium. Some unofficial lists of sworn translators and interpreters are maintained by the registrars of the various courts but these lists have no legal basis.</p> <p>The Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters<sup>89</sup>, adopted in 2014, establishes a national register for legal translators and interpreters, aiming to guarantee the uniformity and quality of translation. The register should be established when the Act takes effect as of 1<sup>st</sup> January 2017.</p>
	b) Do translators and interpreters have to be listed in databases/registers for their services to be used? In other words, is		No	<p>Under the current legislation, no such condition is required since these databases and registers do not yet exist.</p> <p>Under the new Act of 10 April 2014 (which transposes Article 5 of Council Directive 2010/64/EU)<sup>90</sup>, only translators and interpreters who have been registered (following a judicial decision) will be entitled to carry out translation and interpretation missions.</p>

<sup>88</sup> See in particular Art. 5 and relevant recitals of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

<sup>89</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*, 10 April 2014).

<sup>90</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 20.

	membership/registration mandatory?			<p>The judicial authority will be able to appoint, by reasoned decision, an interpreter or translator who is not listed in the register in urgent cases where a registered interpreter/translator is not available, or in cases involving rare or lesser-known languages.<sup>91</sup></p> <p>The translators and interpreters currently working will have five years to gain entry onto the register by satisfying the registration conditions set out in the Act, once the Act itself comes into effect.<sup>92</sup></p>
	c) Who has access to these databases?	<p><b>Brief Description:</b></p> <p>The Ministry of Justice will be in charge of updating and managing the register.<sup>93</sup> No official information has yet been provided about the right to access the register. No implementation measures have been taken, and the decision is still pending. Wide access should normally be granted<sup>94</sup>, allowing police services, judicial authorities, translators and interpreters to consult the register, as expected by the Chamber of translators and interpreters<sup>95</sup></p>		

<sup>91</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 27.

<sup>92</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 29.

<sup>93</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 22.

<sup>94</sup> Belgium, representative of the Brussels Judicial Police.

<sup>95</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

	<p>d) Which professional qualifications are needed by:</p> <ul style="list-style-type: none"> <li>• Translators and</li> <li>• interpreters</li> </ul> <p>in order to be registered in the database?</p>	<p><b>Brief Description:</b></p> <p>In the current system, there is no uniform legal requirement concerning specific professional qualifications. Anyone can be a “sworn interpreter” after having taken an oath, as the profession itself is not regulated. An exception to this rule is the completion of a specialised training programme (150-hour course) offered at Lessius University College in the judicial districts of Antwerp, Mechelen and Turnhout.<sup>96</sup></p> <p>According to the new Act of 10 April 2014<sup>97</sup> (which should come into effect on 1<sup>st</sup> January 2017), translators and interpreters must attest to their professional competence and legal knowledge.</p> <ul style="list-style-type: none"> <li>- Professional competence may be demonstrated by providing any degree, or any relevant professional experience for at least two years, and achieved in a period of eight years prior to the registration application.</li> <li>- Legal knowledge may be demonstrated by providing a certificate from a designated educational institution.<sup>98</sup></li> </ul>		
	<p>e) Are there any requirements in place to ensure the independence of interpreters</p>	<p>Yes</p>		<p>Under the new Act of 10 April 2014, interpreters and translators will have to adhere, by written declaration, to the code of conduct of translators and interpreters<sup>99</sup> which specifies inter alia the principles of independence and impartiality.<sup>100</sup></p>

<sup>96</sup> Institut de Management et de Communication Interculturels, Charles University in Prague, Fachhochschule Köln, Heriot-Watt University Edinburgh, Lessius University College Antwerp, Università di Bologna sede di Forlì (2011-2012), *ImPLI – Improving Police and Legal Interpreting*, Brussels, European Commission Directorate-General Justice, available at: [www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI\\_Final\\_Report.pdf](http://www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI_Final_Report.pdf).

<sup>97</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 21.

<sup>98</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 25.

<sup>99</sup> Belgium, Code of conduct of translators and interpreters (*Code de déontologie des traducteurs, des interprètes et des traducteurs-interprètes jurés*), available at: [www.lingvajuris.org/data/Codede\\_Forum\\_LinguaJuris.doc](http://www.lingvajuris.org/data/Codede_Forum_LinguaJuris.doc).

<sup>100</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 21.

	and translators? If yes, provide a brief overview (for both translators and interpreters).			<p>Although the principles of independence and quality have already been included in the new Act, there are no implementation measures giving details on these principles yet.<sup>101</sup></p> <p>Translators and interpreters will also be required to take an oath to join the register, but, unlike the current system, they will not swear an oath each time, e.g. at the beginning of a new mission. According to the 'Improving police and legal interpreting' (ImPLI) report<sup>102</sup>, Belgian interpreters have used standardised formulas for introducing themselves for the past ten years. One such standard introduction is: "I am impartial, I do not belong to the police force, everything that is said here is confidential, I will not have any private conversations, the police officer is in charge of the interview, I will translate everything without omissions, additions or modifications, using the first person singular, so you can address each other directly." Taking an oath is a mean to guarantee independence and impartiality.</p>
	f) Is access to existing databases provided through the <a href="#">European e-Justice portal</a> ? <sup>103</sup> How is this register available to legal counsel and relevant authorities?		No	There is currently no centralised official database or register of translators and interpreters in Belgium.
	g) Are criminal justice institutions required to use	Yes		Under the new Act of 10 April 2014 <sup>104</sup> , only translators and interpreters who have been registered (following a judicial decision) will be entitled to carry out translating and interpreting missions. The judicial authority may appoint, by

<sup>101</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

<sup>102</sup> Institut de Management et de Communication Interculturels, Charles University in Prague, Fachhochschule Köln, Heriot-Watt University Edinburgh, Lessius University College Antwerp, Università di Bologna sede di Forlì (2011-2012), *ImPLI – Improving Police and Legal Interpreting*, Brussels, European Commission Directorate-General Justice, available at: [www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI\\_Final\\_Report.pdf](http://www.isit-paris.fr/wp-content/uploads/2014/11/IMPLI_Final_Report.pdf).

<sup>103</sup> <https://e-justice.europa.eu/home.do?plang=en&action=home>.

<sup>104</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 20.

	interpreters and translators listed in these registers?			reasoned decision, an interpreter or translator not listed in the register in cases of urgency, the unavailability of an interpreter/translator, or for rare/lesser-known languages. <sup>105</sup>
<b>3.2</b>	<b>With regard to other mechanisms/procedures:</b>	<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
	a) Are there other mechanisms or procedures in place to ensure the quality and independence of interpretation and translation during the course of the proceedings? Are there any quality checks? Who is responsible for carrying them out?	Yes		<p>Under the new Act of 10 April 2014, in cases where the translator or interpreter's performance is found to be inappropriate, the Minister of Justice, from a request of the Public Prosecutor or the President of the court where the translator/interpreter concerned operates, will be able to temporarily or definitely remove his/her name from the register, after having heard from the interested party.<sup>106</sup> Such inappropriate performance must occur repeatedly.</p> <p>The new Act of 10 April 2014 does not provide the possibility for police officers to submit a request of this kind to the Ministry of Justice. Currently, during the police questioning, it is common in practice to ask the person concerned whether or not the interpretation or translation provided is sufficiently clear and understandable, especially when the legal counsel is present. It aims at preventing any challenge that may occur afterwards. Sometimes, police officers or other stakeholders can ascertain themselves the quality of interpretation or translation in cases where they speak the language spoken by the person questioned. In practice, if an interpreter is known for the poor quality of interpretation or translation concerned will not be appointed again. The creation of a national register should facilitate access to qualified interpreters. Quality checks are not taking place in practice.<sup>107</sup></p>

<sup>105</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 27.

<sup>106</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 24.

<sup>107</sup> Belgium, representative of the Brussels Judicial Police.

	b) Is there any procedure in place to ensure that suspects or accused persons have the possibility, when interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation?		No	<p>No implementing measures for the new Act of 10 April 2014<sup>108</sup> have yet been adopted. There is no procedure by which the suspected or accused person may complain about the quality of interpretation. Article 282 of the Code of Criminal Procedure allows the refusal of the interpreter at the request of the accused person, the civil party and the public prosecutor.</p> <p>However, in accordance with the new Act of 10 April 2014 (not yet in force)<sup>109</sup>, in cases where the translator or interpreter's performance is found to be inappropriate, the Minister of Justice will be able to temporarily, or permanently, remove his/her name from the register, following a request from the Public Prosecutor or the President of the court where the translator/interpreter concerned works. The provision stipulates that the interested party must be heard.</p> <p>Therefore, suspected or accused persons cannot complain directly about the quality of interpretation but their opinion is taken into account in cases of complaint.</p>
	c) Are there any mechanisms in place that allow for the replacement of the appointed interpreter or a new translation when the quality of the	Yes		<p>In accordance with the new Act of 10 April 2014 (not yet in force)<sup>110</sup>, in cases where the translator or interpreter's performance is found to be inappropriate, the Minister of Justice, following a request from the Public Prosecutor or the President of the court where the translator/interpreter concerned operates, will be able to temporarily or definitely remove his/her name from the register, after having heard from the interested party. The length of a temporary removal</p>

<sup>108</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014.

<sup>109</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 24.

<sup>110</sup> Belgium, [Act pertaining to various provisions aiming at the creation of a national register for legal experts, translators and interpreters](#) (*Loi modifiant diverses dispositions en vue d'établir un registre national des experts judiciaires et établissant un registre national des traducteurs, interprètes et traducteurs-interprètes jurés / Wet tot wijziging van verschillende bepalingen met het oog op de oprichting van een nationaal register voor gerechtsdeskundigen en tot oprichting van een nationaal register voor beëdigd vertalers, tolken en vertalers-tolken*), 10 April 2014, Art. 24.

	interpretation or the independence of the interpreter is considered insufficient? If yes, briefly provide information.			will be set by the Minister of Justice according to the gravity of the situation, without exceeding one year.  According to the Chamber of interpreters and translators, the fact that the request comes from a magistrate could lead to deontological issues. It does not appear to be in line with the concept of deontology as it relates to the profession itself. Therefore, some representatives of the profession should also be involved in the decision process. <sup>111</sup> In practice, it is not easy to replace the interpreter or translator in charge since any replacement will also have to take an oath before their mission. Thus, if an interpreter has to be replaced, it can only take place at the next hearing. <sup>112</sup>
3.3	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? <sup>113</sup> If yes, briefly provide information on those mechanisms considering the following vulnerable groups:	Yes		Under the current legislation, special procedures take into account the needs of vulnerable suspected or accused persons.
	a) suspect or accused persons with physical impairment or disability;	Yes		If the accused person is profoundly deaf and unable to write, the judge will assign an interpreter, someone with whom the accused person is accustomed to speaking. If the accused is able to write, the Registrar will submit questions and observations to the accused, who will respond in writing. <sup>114</sup> The Registrar will then read out the accused's answers. It is noted that several associations of sign language interpretation for deaf people exist in Belgium. <sup>115</sup>

<sup>111</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

<sup>112</sup> Belgium, representative of the Belgian Chamber of Translators and Interpreters.

<sup>113</sup> See in particular recital 27 of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings..

<sup>114</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 283.

<sup>115</sup> French Community listing of contact information for deaf people, available at: [www.langue-des-signes.cfwb.be/index.php?eID=tx\\_nawsecured1&u=0&file=fileadmin/sites/ccls/upload/ccls\\_super\\_editor/ccls\\_editor/pdf/Liste\\_des\\_cooronnees\\_surdite\\_version\\_31\\_juillet\\_2010.pdf&hash=3c1da4aeb886b55c8fb2605c8b9bf2cd5eae93bb](http://www.langue-des-signes.cfwb.be/index.php?eID=tx_nawsecured1&u=0&file=fileadmin/sites/ccls/upload/ccls_super_editor/ccls_editor/pdf/Liste_des_cooronnees_surdite_version_31_juillet_2010.pdf&hash=3c1da4aeb886b55c8fb2605c8b9bf2cd5eae93bb), p. 2.

	b) suspect or accused persons with intellectual impairment or disability;	Yes		<p>In Belgium, special rules on legal incapacity are provided by the Civil Code and have recently been updated by the Act reforming the legal incapacity regime and instituting a new protection status that is consistent with human dignity.<sup>116</sup> Depending on the autonomy of the person concerned, a choice will be made between an extrajudicial protection and a judicial protection. Extrajudicial protection allows the persons concerned to organise themselves the protection on behalf of an authorised representative. Judicial protection will be based upon a Civil Magistrate's decision, and will involve the organization of a tailored protection to suit the individual's special needs. A trustworthy person or an administrator is appointed to provide support during procedures and to represent the person concerned (subject to authorisation from a Civil Magistrate. The legal incapacity may be total or partial, temporary or permanent.</p> <p>Article 492/1 § 2 of the Civil Code set out that the Civil Magistrate's decision must explicitly refer to the right of the person concerned to engage in legal proceedings (as applicant or defendant).</p>
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).	Yes		<p>i) Article 52 ter and Article 54 bis of the Youth Protection Act<sup>117</sup> provide the automatic right to assistance from a legal counsel when children are suspects/defendants. Children cannot waive this right.<sup>118</sup></p> <p>ii) There is no specific procedure regarding holders of parental responsibility. The general rules apply to them.</p>
<b>3.4</b>	Is there any recording procedure to note that interpretation and translation have occurred and in which form? <sup>119</sup> If yes, briefly	Yes		<p>Any hearing report must mention, inter alia, the identity of all persons involved in the questioning.<sup>120</sup> When interpretation or translation has been provided, it is thus written in the minutes of the hearing. This provision concerns police questioning (pre-trial stage) as well as court hearings.<sup>121</sup> In addition, the text of the oath sworn by the interpreter or</p>

<sup>116</sup> Belgium, [Act reforming the incapacity regime instituting a new protection status that is consistent with human dignity](#) (*Loi réformant les régimes d'incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine / Wet tot hervorming van de regelingen inzake onbekwaamheid en tot instelling van een nieuwe beschermingsstatus die strookt met de menselijke waardigheid*, 17 March 2013).

<sup>117</sup> Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstellen van de door dit feit veroorzaakte schade*), 8 April 1965.

<sup>118</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>119</sup> See in particular Art. 7 and relevant recitals of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

<sup>120</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

provide information on how this procedure is organised in practice.			translation, and the costs incurred, are also mentioned. <sup>122</sup>
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## SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS <sup>123</sup>	Brief Description
1.1		<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) What information is provided?</p> <p>b) How is it provided (e.g. orally or in writing)?</p> <p>c) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</p> <p><b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>
	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) At the beginning of any questioning, a suspect of an offence must be informed of the following:</p> <ul style="list-style-type: none"> <li>• the facts on which they will be questioned;</li> <li>• their right to request that all the questions that are asked and the answers he/she gives are written down word for word;</li> <li>• their right to request that an investigating act be performed or hearing carried out;</li> </ul>

<sup>121</sup> Belgium, representative of the Brussels Judicial Police.

<sup>122</sup> Belgium, legal practitioner and representative of the Liège Bar.

<sup>123</sup> See in particular Article 3 and relevant recitals of Directive 2012/13/EU on the right to information in criminal proceedings.

- that their statements can be used as evidence in court;
- that they cannot be compelled to incriminate themselves;
- that they have a choice, after providing information on her/his identity, to make a statement, to answer questions, or to remain silent;
- that they have the right, prior to the first hearing, to consult privately with a legal counsel of their choice or with a legal counsel who has been appointed to them, provided that the facts for which they may be charged may result in the issuance of an arrest warrant;
- that they have the right to benefit from secondary legal assistance if they do not have sufficient resources;
- that they are not deprived of liberty and are free to go at any time.<sup>124</sup>

In case of administrative custody (such as breaches of the peace, safety, or where there are reasonable grounds to believe that the person is about to commit an offence), any person (child or adult) who is arrested administratively must be informed of:

- their deprivation of liberty;
- the reasons which underlie it;
- the maximum duration of the deprivation of liberty;
- the material procedures when being placed in custody;
- the possibility of resorting to coercive measures.

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<sup>124</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<p>b) The information about the rights mentioned above must be provided to the person, both in writing and orally. At the beginning of the questioning, the police officer must orally mention these procedural rights. The rights mentioned above must also be accurately noted in a transcription that will be attached to the criminal file.<sup>125</sup> The fact that the provision of this information has been given is thus duly transcribed in the minutes of the questioning.<sup>126</sup></p> <p>If the first hearing takes place after a written summons, the latter contains a communication of the facts on which the person will be questioned. The Code of Criminal Procedure does not specify how this information on the facts may be provided when there is no written summons.</p> <p>In case of administrative custody, the rights attached to the deprivation of liberty must be notified, either orally or in writing, and in a language the person who is subject to the administrative arrest/custody understands.<sup>127</sup></p>
<p>c) The information about the rights mentioned above must be provided to the person at the beginning of any questioning<sup>128</sup>, both in writing and orally. Most of rights mentioned above are described in the letter of rights provided to the accused or suspected person. At the beginning of the questioning, the police officer must also mention orally information about these procedural rights. The fact that the provision of this information has been given is duly transcribed in the minutes of the questioning.<sup>129</sup></p> <p>In the case of administrative custody, the rights attached to the deprivation of liberty must be notified at the moment the administrative police officer carries out or confirms the deprivation of liberty.<sup>130</sup></p>
<p>a) The legislation specifies that information about the rights mentioned above must also be provided during court hearings 'at the beginning of any questioning'.<sup>131</sup> The judge will therefore inform suspected or accused persons of their procedural rights before starting questioning them.</p>

- court hearings;

<sup>125</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>126</sup> Belgium, representative of the Brussels Judicial Police.

<sup>127</sup> Belgium, [Act on the police functions](#) (*Loi sur la fonction de police / Wet op het politieambt*), 5 August 1992, Art. 33 ter.

<sup>128</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>129</sup> Belgium, representative of the Brussels Judicial Police.

<sup>130</sup> Belgium, [Act on the police functions](#) (*Loi sur la fonction de police / Wet op het politieambt*), 5 August 1992, Art. 33 ter.

<sup>131</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

		b) After the police questioning, information on procedural rights may be provided orally by the legal counsel. <sup>132</sup>
		c) N/A
	<ul style="list-style-type: none"> <li>any necessary interim hearings;</li> </ul>	a) The legislation mentions that information about the rights mentioned above 'at the beginning of any questioning' and at any necessary interim hearings. <sup>133</sup>
		b) Information on procedural rights is provided orally. <sup>134</sup>
		c) N/A
	<ul style="list-style-type: none"> <li>any communication between suspects and accused</li> </ul>	a) The legal counsel is required to inform his/her client about the rights mentioned above. <sup>135</sup> The role of the legal counsel is to represent and to inform his/her client, as mentioned in all Codes of conduct applicable in Belgium. <sup>136</sup>

<sup>132</sup> Belgium, legal practitioners.

<sup>133</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>134</sup> Belgium, legal practitioners.

<sup>135</sup> Belgium, legal practitioners.

<sup>136</sup> Belgium, Code of conduct of legal practitioners, available at: [www.barreaudebruxelles.info/images/publications/recueil\\_codeon\\_rdb.pdf](http://www.barreaudebruxelles.info/images/publications/recueil_codeon_rdb.pdf) ; <http://liege.obfg.be/deo/Code%20d%27a9ontologie%20en%20vigueur%20au%2001.10.2013.pdf> or [www.advocaat.be/UserFiles/file/reglementen/2015%2001%2009%20DEF\\_%20Codex%20Deontologie%20voor%20publicatie%20BS.pdf](http://www.advocaat.be/UserFiles/file/reglementen/2015%2001%2009%20DEF_%20Codex%20Deontologie%20voor%20publicatie%20BS.pdf)

	persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?	b) Information on procedural rights is usually provided orally by the legal counsel. <sup>137</sup>
		c) N/A
1.2	Do authorities provide information about any other procedural rights (apart from those established in Article 3 of the Directive)? If yes, briefly provide information.	The authorities do not provide information about any other procedural rights.
2.	<b>LETTER OF RIGHTS<sup>138</sup></b>	<b>Brief Description</b>
2.1	What rights does the letter of rights provide information about? What information is included in the letter of rights when children are arrested or detained?	<p>The content of the letter of rights provided to a suspected person who is not deprived of liberty differs from the one provided to someone who is deprived of liberty. Article 47 bis of the Code of Criminal Procedure sets out that the content and form of the letter of rights must be determined by law (see the Royal Decree implementing Article 47 bis §4 of the Code of Criminal Procedure).<sup>139</sup></p> <p>In both cases the letter of rights provides information about:</p> <ul style="list-style-type: none"> <li>• the right to be informed of the facts on which they will be questioned;</li> </ul>

<sup>137</sup> Belgium, legal practitioners.

<sup>138</sup> See in particular Art. 4 and relevant recitals of Directive 2012/13/EU on the right to information in criminal proceedings.

<sup>139</sup> Belgium, [Royal Decree implementing Article 47 bis § 4 of the Code of Criminal Procedure](#) (*Arrêté royal portant exécution de l'article 47 bis, § 4, du Code d'instruction criminelle / Koninklijk besluit tot uitvoering van artikel 47 bis, § 4, van het Wetboek van Strafvordering*), 16 December 2011.

- the right to remain silent and not to incriminate themselves;
- the right to consult privately with a legal counsel of their choice or with a legal counsel who has been appointed (and information about the conditions under which legal aid is provided);
- the right to request that all the questions that are asked and the answers given are written down word for word;
- the right to request that an investigating act be performed, or hearing carried out;
- the fact that her/his statements can be used as evidence in court;
- the right to use any documents, and to request that documents be annexed to the report;
- the right to read, and to correct, the statement at the end of the questioning; and
- the right to interpretation.

If the suspect is deprived of liberty, the letter of rights also provides information about the length and procedure of the deprivation.

In addition to the rights mentioned above, the suspect has to right to:

- inform someone of the current deprivation of liberty; and
- medical assistance.

When children are arrested or detained, a letter of rights, including the rights mentioned above, is provided. In practice, however, some difficulties arise from the language used in the document, which is sometimes perceived as too difficult to understand.<sup>140</sup> As there is no specific model of letter of rights for children, the letter of rights provided to adults is used.<sup>141</sup> But children do have additional protection,

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<sup>140</sup> Penne, H., Raes, A., Criminal Policy Service (2013), *The Salduz Act - Final report*, available at: [www.dsb-spc.be/doc/pdf/Salduz\\_rapportfinal\\_FR.pdf](http://www.dsb-spc.be/doc/pdf/Salduz_rapportfinal_FR.pdf), p. 65.

<sup>141</sup> Belgium, representative of the Brussels Judicial Police.

		since they cannot waive their right to be assisted by a legal counsel. <sup>142</sup> The police officer in charge of the deprivation of liberty must also give oral or written information regarding the arrest, the reasons for it, and the place where the child is detained, to the father and mother of the child, or his/her guardian or persons having custody in law or in fact. <sup>143</sup>
2.2	At what stage of the proceedings is the letter of rights provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	The letter of rights must be provided to the suspect before the first questioning. <sup>144</sup>  This has been confirmed in practice: the letter of rights is always provided to the accused or suspected person prior to the first court hearings. <sup>145</sup> In practice, most police officers provide the letter of rights as soon as possible. <sup>146</sup>
2.3	Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language is simple and	The content and the form of the letter of rights must be determined by law. <sup>147</sup> According to the preamble of the Royal Decree implementing Article 47 bis §4 of 1 the Code of Criminal Procedure <sup>148</sup> , the rights set out in the letter of rights must be drafted in understandable and intelligible language.  A working group composed of police services, representatives of the judiciary, investigating judges, the Federal Public Service Justice

<sup>142</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis, §2 (3) and [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade*), 8 April 1965, Art. 54 bis.

<sup>143</sup> Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade*), 8 April 1965, Art. 48 bis.

<sup>144</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis (4).

<sup>145</sup> Belgium, legal practitioner and representative of the Liège Bar.

<sup>146</sup> Belgium, representative of the Brussels Judicial Police.

<sup>147</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>148</sup> Belgium, [Royal Decree implementing Article 47 bis § 4 of the Code of Criminal Procedure](#) (*Arrêté royal portant exécution de l'article 47 bis, § 4, du Code d'instruction criminelle / Koninklijk besluit tot uitvoering van artikel 47 bis, § 4, van het Wetboek van Strafvordering*), 16 December 2011.

	accessible enough for the suspects or accused persons and/or that the suspects or accused persons understand the language? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	administration and Bar associations, was responsible for drafting an accessible and understandable tool containing information about procedural rights. To ensure the simplicity and accessibility of the language, the draft was reviewed in order to comply with the requirements of the Directive 2012/13/EU on the right to information in criminal proceedings <sup>149</sup> , inter alia the readability and the ease of understanding of the text. <sup>150</sup> After the entry into effect of the so-called ‘Salduz Act’ <sup>151</sup> , a subsequent evaluation was conducted by the Criminal Policy Service of the Federal Public Service Justice to ascertain, through interviews with suspected or detained persons, the accessibility of the letter of rights. <sup>152</sup> Should a review be undertaken of the letter of rights currently used, these results will be taken into account. <sup>153</sup>
<b>3.</b>	<b>RIGHT TO INFORMATION ABOUT THE ACCUSATION<sup>154</sup></b>	<b>Brief Description</b>
<b>3.1</b>	What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally	The suspect or the accused person must be briefly informed of the facts on which he/she will be questioned. <sup>155</sup>  If the first hearing takes place after a written summons, the latter may contain a communication of the facts which the accused or the suspected person is accused of. In cases of administrative custody, the rights in relation to the deprivation of liberty must be notified, either orally or in writing, and in a language the person who is subject to the administrative arrest/custody understands. <sup>156</sup>

<sup>149</sup> Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings, OJ C 54.

<sup>150</sup> Belgium, representative of the Federal Public Service Justice.

<sup>151</sup> Belgium, [Act amending the Code of Criminal Procedure and the Preventive Detention Act in order to confer rights to persons questioned and persons deprived of liberty, among the right to consult a legal counsel](#) (*Loi modifiant le Code d'instruction criminelle et la loi du 20 juillet 1990 relative à la détention préventive afin de conférer des droits, à toute personne auditionnée et à toute personne privée de liberté dont le droit de consulter un avocat et d'être assistée par lui (citée comme loi Salduz) / Wet tot wijziging van het Wetboek van strafvordering en van de wet van 20 juli 1990 betreffende de voorlopige hechtenis, om aan elkeen die wordt verhoord en aan elkeen wiens vrijheid wordt benomen rechten te verlenen, waaronder het recht om een advocaat te raadplegen en door hem te worden bijgestaan (aangehaald als : wet Salduz)*), 13 August 2011.

<sup>152</sup> Penne, H., Raes, A., Criminal Policy Service (2013), *The Salduz Act - Final report*, available at: [www.dsb-spc.be/doc/pdf/Salduz\\_rapportfinal\\_FR.pdf](http://www.dsb-spc.be/doc/pdf/Salduz_rapportfinal_FR.pdf).

<sup>153</sup> Belgium, representative of the Federal Public Service Justice.

<sup>154</sup> See in particular Art. 6 and relevant recitals of Directive 2012/13/EU on the right to information in criminal proceedings.

<sup>155</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>156</sup> Belgium, [Act on the police functions](#) (*Loi sur la fonction de police / Wet op het politieambt*), 5 August 1992, Art. 33 ter.

	or in writing)?	
<b>3.2</b>	At which stage of the proceedings is the information provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	<p>Information about the accusation must be provided to the suspected or the accused person at the beginning of any hearing (police questioning phase or court hearings). The person is, therefore, informed for the first time at the police questioning phase. In the case of a written summons, the suspect or the accused person is informed when receiving the summons containing information about the accusation.<sup>157</sup> If the hearing takes place after a written summons, it allows time for the suspected or accused person to consult a legal counsel and to discuss legal details of the facts at stake. The police officer conducting the questioning will also mention the relevant facts at the hearing.<sup>158</sup></p> <p>It is mandatory to provide brief information about the facts on which the person will be questioned and may be charged of.<sup>159</sup> Providing this information aims at a better understanding of the reasons why the person is heard or arrested. In practice, police officers and judges in charge of the questioning provide this information orally, at the very beginning of the hearing. Guidelines<sup>160</sup> used by police officers for conducting interviews and writing the minutes, provide <i>inter alia</i> for a brief information about the accusation, directly after the identity of the person(s) questioned. Templates based on these guidelines have been established.<sup>161</sup> Police officers thus write down in the minutes of the hearing that the person questioned was informed about the facts. These safeguards prevent any future challenge of the failure to provide such information. At court hearings, the judge will remind orally the facts for which the charges have been filed. In the course of the legal proceedings, the legal counsel has also an important role to play in providing such information to his/her client.<sup>162</sup></p>
<b>3.3</b>	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the	During the hearing, the suspected or accused person must be informed immediately if the details of the accusation change. When the suspected or accused person is deprived of liberty, he/she must be informed at the time of the next hearing before the Pre-trial Chamber and at the time of the settlement of procedure (when the investigating judge considers his/her tasks completed). <sup>163</sup>

<sup>157</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>158</sup> Belgium, representative of the Brussels Judicial Police.

<sup>159</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis (1).

<sup>160</sup> Belgium, Circular 8/2011 on the organisation of the assistance of a legal counsel from the first questioning in criminal proceedings ([Circulaire 8/2011 relative à l'organisation de l'assistance d'un avocat dès la première audition dans le cadre de la procédure pénale belge / Richtlijn 8/2011 inzake de organisatie van de bijstand door een advocaat vanaf het eerste verhoor binnen het kader van het Belgisch strafprocesrecht](#)), 13 June 2013.

<sup>161</sup> These templates are not published as they are in the internal database of police services; Belgium, representative of the Federal Public Service Justice.

<sup>162</sup> Belgium, legal practitioner.

<sup>163</sup> Belgium, legal practitioner and professor at the Université of Liège.

	accusation change?	
<b>4.</b>	<b>RIGHT OF ACCESS TO CASE MATERIALS<sup>164</sup></b>	<b>Brief Description</b>
<b>4.1</b>	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	According to Article 61 ter of the Code of Criminal Procedure, any 'person directly affected' may request access to the criminal file and obtain copies. The accused or suspected person is deemed to be a person directly affected. <sup>165</sup> No details on the content of the file are set in the legislation.
<b>4.2</b>	At what stage of the proceedings is access to case materials granted? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	<p>Access to case materials must be granted during pre-trial investigation, except at the police questioning phase. Access to case materials cannot be granted until the person has been charged.<sup>166</sup> The person suspected must be formally charged with the alleged offenses before requiring access to case materials.</p> <p>If the accused is deprived of liberty, the accused and his/her legal counsel must be granted access to the criminal file on the last working day before his/her appearance before the Pre-trial Chamber which confirms the arrest warrant.<sup>167</sup></p> <p>Prior to the issuance of an arrest warrant by the investigating judge, the accused person deprived of liberty and his/her legal counsel may be given access to the case materials. It is not expressly provided by the Code of Criminal Procedure but nor is there any prohibition on doing so.</p> <p>During the appeal proceedings, access to case materials is granted at least 15 days prior to the hearing before the Indictment Division.<sup>168</sup></p>
<b>4.3</b>	Under what circumstances is access to material refused?	According to Article 61 ter of the Code of Criminal Procedure, the decision granting access to the case materials is taken by the investigating judge one month, at the latest, from the date of the request. To be granted access to case materials, a reasoned request

<sup>164</sup> See in particular Art. 7 and relevant recitals of Directive 2012/13/EU on the right to information in criminal proceedings.

<sup>165</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 21 bis.

<sup>166</sup> Belgium, representative of the Brussels Judicial Police.

<sup>167</sup> Belgium, [Act on provisional detention](#) (*Loi relative à la détention préventive / Wet betreffende de voorlopige hechtenis*), 20 July 1990, Art. 21 ter.

<sup>168</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 135.

	Who takes the decision of refusal?	<p>should be addressed to the Registrar of the Court of First Instance. A copy of the request is sent to the Public Prosecutor.</p> <p>The investigating judge may prohibit or limit access to the criminal file, or to certain materials, when:</p> <ul style="list-style-type: none"> <li>• the requirements of the investigation make it mandatory;</li> <li>• granting access may jeopardise the persons concerned, or infringe the personal privacy of an individual;</li> <li>• the suspect has no legitimate interest for such access to the case materials.</li> </ul> <p>The refusal can be challenged by the person concerned, or by the Public Prosecutor.</p> <p>No access to case materials can be granted at the police questioning phase.</p>
<b>5.</b>	<b>CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING &amp; SPECIAL MEASURES<sup>169</sup></b>	<b>Brief Description</b>
<b>5.1</b>	In which languages can information be provided for the following?	
	a) information on procedural rights	<p>According to Article 47 bis of the Code of Criminal Procedure, the person questioned by the police or judicial service has the right to an interpreter if they cannot understand or speak the language of the proceedings.</p> <p>In case of administrative custody, Article 33 ter of the Act on the police functions<sup>170</sup> provides that the rights attached to the deprivation of liberty must be notified to the person who is subject to administrative arrest/custody in a language he/she understands.</p>

<sup>169</sup> See in particular Art. 3, Art. 8 and relevant recitals of Directive 2012/13/EU on the right to information in criminal proceedings.

<sup>170</sup> Belgium, [Act on the police functions](#) (*Loi sur la fonction de police / Wet op het politieambt*), 5 August 1992.

b) letter of rights	<p>The Minister of Justice is responsible for the translation of the letter of rights into all official languages of the Member States of the European Union, at a minimum.<sup>171</sup> On the official website of the Federal Public Service Justice, a translation of the letter of rights is available in 49 languages.<sup>172</sup> If translation of the letter of rights is not available in the language required, an interpreter will be appointed.<sup>173</sup></p> <p>In practice, the letter of rights is provided to the suspected or accused person in his/her native language or in a language he/she understands so there should be no need for an interpreter.<sup>174</sup></p>		
c) information about the accusation	<p>According to Article 47 bis of the Code of Criminal Procedure, the person questioned by the police or judicial service has the right to an interpreter if they cannot understand or speak the language of the proceedings.</p>		
d) case materials	<p>As mentioned above, in Belgium, the language of the proceedings will be French, Dutch, or German, depending on where the proceedings are initiated.<sup>175</sup> In practice, the accused or suspected person is being asked in which language he/she wants to speak. If the chosen language does not correspond to the language of the proceedings, an interpreter must be assigned. Thus, case materials are available in the language of the proceedings (one of the three Belgian national languages) but an interpreter might be appointed to assist the person.</p>		
	<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
5.2			<p>Is there any procedure to ensure that suspects or accused persons have the right to challenge the failure or refusal to provide information on the following?</p> <p>It is noted that failure to provide</p> <ul style="list-style-type: none"> <li>- information on the right to be informed of the facts on which they will be questioned;</li> <li>- information on the right not to incriminate themselves;</li> <li>- information on the right to remain silent;</li> <li>- the right to consult privately with a legal counsel of their choice or with a legal counsel who has been appointed;</li> <li>- a written declaration of rights</li> </ul>

<sup>171</sup> Belgium, [Royal Decree implementing Article 47 bis § 4 of the Code of Criminal Procedure](#) (*Arrêté royal portant exécution de l'article 47 bis, § 4, du Code d'instruction criminelle / Koninklijk besluit tot uitvoering van artikel 47 bis, § 4, van het Wetboek van Strafvordering*), 16 December 2011, Art. 3.

<sup>172</sup> Federal Public Service Justice website, available at: [http://justice.belgium.be/fr/themes\\_et\\_dossiers/services\\_du\\_spf/telecharger\\_des\\_documents/declaration\\_de\\_droits/](http://justice.belgium.be/fr/themes_et_dossiers/services_du_spf/telecharger_des_documents/declaration_de_droits/).

<sup>173</sup> Belgium, representative of the Brussels Judicial Police.

<sup>174</sup> Penne, H., Raes, A., Criminal Policy Service (2013), *The Salduz Act - Final report*, available at: [www.dsb-spc.be/doc/pdf/Salduz\\_rapportfinal\\_FR.pdf](http://www.dsb-spc.be/doc/pdf/Salduz_rapportfinal_FR.pdf), p. 65.

<sup>175</sup> Belgium, [Act on the use of languages in judicial proceedings](#) (*Loi concernant l'emploi des langues en matière judiciaire/ Wet op het gebruik der talen in gerechtszaken*), 15 June 1935.

	<b>If yes, briefly describe the procedure where relevant.</b>			is sanctioned. No conviction could be based on statements obtained in violation of these requirements. <sup>176</sup>
	a) information on procedural rights	Yes		Providing information on procedural rights before any hearing (from police questioning to court hearings) is mandatory. <sup>177</sup> Safeguards have therefore been introduced to avoid the failure of providing this information at the police questioning phase, such as a transcription in the minutes of the hearing that the person has to sign. The police officer, the legal counsel and the judge are required to provide such information. <sup>178</sup> In case the information is not provided, the suspect of accused can therefore appeal for the lack of respect of procedural rights. <sup>179</sup>
	b) letter of rights	Yes		A written letter of rights must be provided to the person questioned. <sup>180</sup> As mentioned above, safeguards have therefore been introduced to avoid the failure of providing this document during the police questioning phase (the letter of rights is only provided to the accused or suspected person at this stage, and not during next hearings). Safeguards have also been introduced to prevent any challenge: the person questioned has to sign the letter of rights twice (a copy that the person can keep and a copy to be added to the procedural file). Failure to provide the letter of rights almost never happened in practice. <sup>181</sup> In case the letter of rights is not provided, the suspect of accused can appeal for the lack of respect of procedural rights. <sup>182</sup>
	c) information about the	Yes		Information about the accusation must be provided at the beginning of any questioning. <sup>183</sup> In case the information is not provided, the suspect of accused can therefore appeal for the lack of respect of procedural rights. In practice, guidelines <sup>184</sup>

<sup>176</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis (6).

<sup>177</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>178</sup> Belgium, representative of the Brussels Judicial Police and a legal practitioner.

<sup>179</sup> There is no specific legal basis on the right to appeal against this specific failure. There is however a legal obligation to provide such information. In the Belgian judicial system, a legal obligation implies that its non-respect can be challenged as it would amount to a procedural infringement (*vice de procédure/procedurefout*).

<sup>180</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

<sup>181</sup> Belgium, representative of the Brussels Judicial Police.

<sup>182</sup> There is no specific legal basis on the right to appeal against this specific failure. There is however a legal obligation to provide such information. In the Belgian judicial system, a legal obligation implies that its non-respect can be challenged.

<sup>183</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis.

	accusation			used by police officers for conducting interviews and writing the minutes provide inter alia for a brief information about the facts on which the person will be questioned, directly after the identity of the person(s) questioned. Templates based on these guidelines have been established. <sup>185</sup> Police officers thus write down in the minutes of the hearing that the person questioned was informed about the facts and the person has to sign it. <sup>186</sup> These safeguards prevent any future challenge of the failure to provide such information. At court hearings, the judge will remind orally the facts for which the charges have been filed. In the course of the legal proceedings, the legal counsel has also an important role to play in providing such information to his/her client. <sup>187</sup>
	d) access to case materials	Yes		At the police questioning stage, access to case materials cannot be granted. The person suspected must be formally charged with the alleged offenses before requiring access to case materials. <sup>188</sup>  If the request to access case materials is denied by the investigating judge, the Public Prosecutor or the applicant can refer to the Indictment Division within eight days. The Indictment Division must rule, without discussion, within 15 days of the date of request. <sup>189</sup>  If the investigating judge fails to rule within one month of the date of the request's registration, the applicant may refer directly to the Indictment Division. <sup>190</sup>
5.3	Is any official record kept to note the provision of information about the following?			

<sup>184</sup> Belgium, Circular 8/2011 on the organisation of the assistance of a legal counsel from the first questioning in criminal proceedings ([Circulaire 8/2011 relative à l'organisation de l'assistance d'un avocat dès la première audition dans le cadre de la procédure pénale belge / Richtlijn 8/2011 inzake de organisatie van de bijstand door een advocaat vanaf het eerste verhoor binnen het kader van het Belgisch strafprocesrecht](#)), 13 June 2013.

<sup>185</sup> These templates are not published as they are in the internal database of police services. Belgium, representative of the Federal Public Service Justice.

<sup>186</sup> Belgium, representative of the Brussels Judicial Police.

<sup>187</sup> Belgium, legal practitioner.

<sup>188</sup> Belgium, representative of the Brussels Judicial Police.

<sup>189</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 61 ter (5).

<sup>190</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 61 ter (6).

	If yes, briefly describe where relevant.		
	a) information on procedural rights	Yes	<p>According to Article 47 bis of the Code of Criminal Procedure, the procedural rights that have been communicated to the accused or suspected person are accurately transcribed in a report which is added to the criminal file and the practice is to have it signed by the accused or suspected person.<sup>191</sup> The Code of Criminal Procedure does not provide for a legal obligation to sign but it is a practice to have the report containing the statements signed by the person questioned, as mentioned in recent parliamentary papers.<sup>192</sup></p> <p>In case of administrative custody, a notification of the information on procedural rights is confirmed in writing in the register of detainees.<sup>193</sup></p>
	b) letter of rights	Yes	<p>Nothing is set in the legislation but when receiving the letter of rights, the suspected or accused person has to sign it twice (a copy that the person can keep and a copy to be added to the procedural file). This practice is usually respected within police stations throughout Belgium. It aims at preventing any potential challenges about the provision of the letter of rights or misunderstandings.<sup>194</sup></p>
	c) information about the accusation	Yes	<p>According to Article 47 bis of the Code of Criminal Procedure, information about the facts on which the suspect will be questioned is provided at the beginning of any questioning, and is also accurately recorded in the minutes of the hearing. The report has to be signed by the suspected or accused person.<sup>195</sup></p>
	d) access to case materials	Yes	<p>To be granted access to case materials, a motivated request should be addressed to the Registrar of the Court of First Instance. A copy of the request is sent to the Public Prosecutor.<sup>196</sup> If access to case materials is granted, the Registrar will</p>

<sup>191</sup> Belgium, representative of the Brussels Judicial Police.

<sup>192</sup> Belgium, Chamber of Representatives, [Parliamentary papers \(Doc. Parl. Chambre/De Kamer\)](#), 2010-2011, n°53, 1279/005, p. 51.

<sup>193</sup> Belgium, [Act on the police functions \(Loi sur la fonction de police / Wet op het politieambt\)](#), 5 August 1992, Art. 33 ter.

<sup>194</sup> Belgium, representative of the Brussels Judicial Police.

<sup>195</sup> Belgium, representative of the Brussels Judicial Police.

<sup>196</sup> Belgium, [Code of Criminal Procedure \(Code d'instruction criminelle / Wetboek van strafvordering\)](#), 1808, Art. 61 ter (2).

				inform the suspected or accused person (by fax or registered mail) of the moment when the file will be available for consultation. <sup>197</sup> All these documents are therefore kept by the Registrar.
5.4	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons (e.g. because of any physical impairments which affect their ability to communicate effectively (persons with hearing, sight or speech impediments), intellectual disabilities or in case of children and the holder of parental responsibility) in relation to:			
	a) suspect or accused persons with physical impairment or disability;			
	b) suspect or accused persons intellectual impairment or disability;			

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<sup>197</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 61 ter (4).

	<p>c) suspect or accused children who are suspects/defendants and/or the holder of parental responsibility.</p> <p><b>If yes, briefly provide information on those mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?</b></p>			
	<ul style="list-style-type: none"> <li>information on procedural rights</li> </ul>	a)	Yes	<p>As previously mentioned, if the accused person is deaf (i.e. the person cannot hear properly or cannot hear at all) and unable to write, the judge will assign an interpreter (the person with whom the accused person is accustomed to speaking)<sup>198</sup>, e.g. a qualified sign language interpreter.</p> <p>As regards physical impairments in general, medical assistance is almost automatically provided.<sup>199</sup></p>
		b)	Yes	<p>Persons with mental impairments may not be able to exercise autonomy and free will. An adequate protection must thus be ensured. In practice, assistance of a legal counsel is highly recommended (and almost automatic) in order to assess the reliability of the person's statements.<sup>200</sup></p> <p>Persons with mental impairments may fall under a specific status, i.e. prolonged minority, due to their lack of legal capacity. Special rules on legal incapacity are provided by the Civil Code and have recently been updated by a new Act.<sup>201</sup> With the</p>

<sup>198</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 283.

<sup>199</sup> Belgium, representative of the Brussels Judicial Police.

<sup>200</sup> Belgium, representative of the Brussels Judicial Police.

<sup>201</sup> Belgium, [Act reforming the incapacity regime instituting a new protection status that is consistent with human dignity](#) (*Loi réformant les régimes d'incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine / Wet tot hervorming van de regelingen inzake onbekwaamheid en tot instelling van een nieuwe beschermingsstatus die strookt met de menselijke waardigheid*, 17 March 2013.

			<p>enactment of the latter, a unique protection status replaces inter alia the former prolonged minority status, but this new regime only concerns requests introduced after 1st September 2014. Depending on the autonomy of the person concerned, a choice will be made between an extrajudicial protection and a judicial protection. Extrajudicial protection is a new element of the regime, allowing the person concerned to organise their own protection on behalf of an authorised representative. Judicial protection will be based upon a Civil Magistrate's decision, and will involve the organisation of a tailored protection to suit the individual's special needs. A trustworthy person or an administrator is appointed to provide support during such procedures and to represent the person concerned (subject to authorisation from a Civil Magistrate).</p> <p>As regards criminal proceedings, Article 492/1 (2) of the Civil Code sets out that the Civil Magistrate's decision must explicitly refer to the capacity of the person to be a party in legal proceedings (applicant or defendant). Therefore, the person concerned will be assisted by his/her legal representative (and usually a legal counsel).</p>
	c)	Yes	<p>Preliminary Title of the Youth Protection Act<sup>202</sup> provides that children have the right, where the law can infringe his/her rights and freedoms, to be informed of the content of her/his rights and freedoms. However, no details on what this information must contain are provided by law. The general rule, that the prosecutor and examining judge must inform the accused person of the right to a lawyer, applies to the child .</p> <p>In addition, the prosecutor must notify the child, her/his legal representative and the person having custody over the child by law or in fact, in writing, that they may participate in mediation and that they have the opportunity in that case to apply to a mediation service organised by the communities.<sup>203</sup></p>
• letter of rights	a)	Yes	<p>As previously mentioned, if the accused person is deaf (i.e. the person cannot hear properly or cannot hear at all) and unable to write, the judge will assign an interpreter (the person with whom the accused person is accustomed to speaking)<sup>204</sup>, e.g. a qualified sign language interpreter.</p>

<sup>202</sup> Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstellen van de door dit feit veroorzaakte schade*), 8 April 1965.

<sup>203</sup> Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstellen van de door dit feit veroorzaakte schade*), 8 April 1965, Art. 45 quater.

		b)	No	Nothing is set in the legislation. However, as mentioned above, persons with mental impairments are usually assisted by a legal counsel. A judicial or extrajudicial protection is also common in practice.
		c)	No	When children are arrested or detained, a letter of rights identical to the one applicable to an adult is provided to them. In practice, however, some difficulties arise from the language used in the document, which is sometimes perceived as difficult to understand. Oral explanations are therefore welcomed from a police officer. <sup>205</sup>
<ul style="list-style-type: none"> <li>information about the accusation</li> </ul>		a)	Yes	As previously mentioned, if the accused person is deaf (i.e. the person cannot hear properly or cannot hear at all) and unable to write, the judge will assign an interpreter (the person with whom the accused person is accustomed to speaking) <sup>206</sup> , e.g. a qualified sign language interpreter.
		b)		Nothing is set in the legislation. However, as mentioned above, persons with mental impairments are usually assisted by a legal counsel. A judicial or extrajudicial protection is also common in practice.
		c)	Yes	When a child is deprived of his/her liberty following his/her arrest, the officer in charge of the deprivation of liberty must give oral or written information regarding the arrest, the reasons for it, and the place where the child is detained, to the child and to the father and mother of the child, or his/her guardian or persons having custody in law or in fact. This provision also applies when the child has been released based on a commitment, either orally or in writing, to appear at the Court hearing. <sup>207</sup>
<ul style="list-style-type: none"> <li>access to case</li> </ul>		a)	No	Nothing is set in the legislation.

<sup>204</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 283.

<sup>205</sup> Penne, H., Raes, A., Criminal Policy Service (2013), *The Salduz Act - Final report*, available at: [www.dsb-spc.be/doc/pdf/Salduz\\_rapportfinal\\_FR.pdf](http://www.dsb-spc.be/doc/pdf/Salduz_rapportfinal_FR.pdf), p. 65.

<sup>206</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 283.

<sup>207</sup> Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstellen van de door dit feit veroorzaakte schade*), 8 April 1965, Art. 48 bis.

materials	b)	No	.Nothing is set in the legislation. However, as mentioned above, persons with mental impairments are usually assisted by a legal counsel. A judicial or extrajudicial protection is also common in practice.
	c)	No	According to Article 61 ter of the Code of Criminal Procedure, any 'person directly affected' may request access to the criminal file and obtain copies. The accused or suspected person is deemed to be a person directly affected <sup>208</sup> but the legislation does not set specific rules for children. But children do have additional protection, since they cannot waive their right to be assisted by a legal counsel. <sup>209</sup>

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<sup>208</sup> Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), Art. 21 bis.

<sup>209</sup> Belgium, [Code of Criminal Procedure](#) (*Code d'instruction criminelle / Wetboek van strafvordering*), 1808, Art. 47 bis, §2 (3) and [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait / Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade*), 8 April 1965, Art. 54 bis.

