

## *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).

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

1.	RIGHT TO INTERPRETATION <sup>1</sup>	Brief Description
1.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</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>	
1.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p><b>Preliminary note:</b> Rights of suspected and accused are mainly determined in the German Code of Criminal Procedure (StPO) and the Courts Constitution Act (GVG). In order to transpose the Directives 2010/64/EU and 2012/12/EU, Germany has passed a legislative amendment concerning these Acts in July 2013.<sup>2</sup> In the following, reference to the changings will be made at the relevant points.</p>

<sup>1</sup> See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

<p>a) The accused<sup>3</sup> person is to be examined prior to the conclusion of the investigations (Section 163a StPO) by the public prosecution office or by the police, which is the usual case. Section 163a StPO, laying down the conditions of the first examination of an accused person, refers to section 187 GVG. According to this section, an interpreter or a translator has to be called in insofar as this is necessary for the exercise of the accused's rights under the law of criminal procedure. Thus, as police officers are responsible that the examination is conducted lawfully, they as well have the responsibility to determine whether interpretation has to be granted.<sup>4</sup></p> <p>If the accused person is examined by the public prosecution office (Section 163a (2) StPO), it is incumbent on the office to determine the need for interpretation.<sup>5</sup></p> <p>In case that the accused person is arrested, he/she is to be instructed as to his/her rights in a language he/she understands. Further, pursuant to Section 114b (2) StPO in conjunction with Section 187 GVG he/she shall be advised that he/she may demand that an interpreter or a translator is called in for the entire criminal proceedings, free of charge. All information is to be given by the arresting police officers.</p>
<p>b) In practice, the decision whether or not an interpreter is needed is made by the police officers. For this purpose, the accused is asked if communication in German is possible. If such is not the case, an interpreter is usually called in; there shall be no examination if a proper communication is not safeguarded. However, it is observed in practice that exceptions to this rule can arise when an interpreter is not available immediately, e.g. during the night, or when the examination appears urgent. In such situations, examinations are sometimes conducted despite limited communication abilities, with the expectation that another examination can be held later. From this can result inconsistencies or a lack of clarity in the records of interrogation, leading to difficulties in the main hearings.<sup>6</sup></p>
<p>c) Reimbursement of services provided by interpreters and translators is regulated by the Judicial Remuneration and Compensation Act (JVEG). Pursuant to Section 1 JVEG, costs are granted by the Treasury when the interpreter was charged by court or public prosecution</p>

<sup>2</sup> Germany, Act on Strengthening Procedural Rights of Suspected Persons in Criminal Proceedings (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren*), 02.07.2013. available at

[http://www.bgbl.de/banzxaver/bgbl/start.xav?start=%2F%2F\\*\[%40attr\\_id%3D%27bgbl113034.pdf%27\]#\\_\\_bgbl\\_\\_%2F%2F\\*\[%40attr\\_id%3D%27bgbl113034.pdf%27\]\\_\\_1427808128853](http://www.bgbl.de/banzxaver/bgbl/start.xav?start=%2F%2F*[%40attr_id%3D%27bgbl113034.pdf%27]#__bgbl__%2F%2F*[%40attr_id%3D%27bgbl113034.pdf%27]__1427808128853)

<sup>3</sup> In the German criminal procedure law, the term „accused“ refers to a person suspected of an offence from the time of the first examination in which a charge was brought against him/her. Thus, the persons this report deals with are all „accused“, so this term will be used only.

<sup>4</sup> Esser, R. in: Rieß, Peter (2012), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“*, Berlin, de Gruyter. EMRK Art. 6, No. 840.

<sup>5</sup> Esser, R. in: Rieß, Peter (2012), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“*, Berlin, de Gruyter. EMRK Art. 6, No. 840.

<sup>6</sup> Germany, representative of the Criminal Law Committee of the German Bar association (DAV). The DAV is the largest organisation promoting the professional and economic interests of the German lawyers with a total of 67.000 members in 257 associations of lawyers worldwide. The association's Criminal Law Committee issued a written statement on the draft law amending the national law in order to implement the Directives 2010/64/EU and 2012/12/EU (DAV 2013).

		<p>office. When the interpreter was called by the police, it is mandatory that the public prosecution office has either charged the police to do so or has agreed to the mandate before the order was placed (Section 1 (3) JVEG)<sup>7</sup>.</p> <p>In practice, no problems seem to have arisen in this context.<sup>8</sup></p>
		<p>d) There are no fixed deadlines. As a non-German-speaking accused shall not be examined when interpretation is not safeguarded; an interpreter shall be called without delay.</p>
<p>1.1.2</p>	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) Pursuant to Section 185 GVG, an interpreter shall be called in if persons are participating in the main hearing who do not have a command of the German language. Section 187 GVG provides a right of the accused to an interpreter insofar as this is necessary for the exercise of his/her rights under the law of criminal procedure. The decision on the necessity of interpretation is incumbent on the presiding judge at his or her discretion<sup>9</sup>.</p> <p>b) It is noted in the file by police or public prosecution office whether the accused is sufficiently able to communicate in German (pursuant to Section 168b (1) StPO and No. 181 (1) Internal guidelines for criminal proceedings and fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV<sup>10</sup>); further information on recording procedure, see 3.4 below). If this is not the case, it is reported that in practice an interpreter is usually called in by the court. In cases where it was accidentally missed by the court staff to summon an interpreter, a decision is made at the start of the court hearings whether communication is possible. If not, the hearing is rescheduled.<sup>11</sup></p> <p>c) Reimbursement of services provided by interpreters is paid by the Treasury.<sup>12</sup> Only if the defendant has unnecessarily given rise to expenditure by culpable omission or culpably in some other way, e.g. he/she falsely claimed that he/she had no command on the German language, this expenditure is charged to him or her (Section 464c StPO) by a decision of a judge.</p>

<sup>7</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 2 BvR 189/07, 29 March 2007.

<sup>8</sup> Germany, representative of the DAV..

<sup>9</sup> Meyer-Goßner, L. (2014), *„Strafprozessordnung“*, München, C.H. Beck, § 187 GVG No. 6.

<sup>10</sup> Internal guidelines for criminal proceedings and fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV, available at [www.verwaltungsvorschriften-im-internet.de/bsvwbund\\_01011977\\_420821R5902002.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_01011977_420821R5902002.htm).

<sup>11</sup> Germany, representative of the DAV.

<sup>12</sup> Esser, R. in: Rieß, Peter (2012), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“*, Berlin, de Gruyter, EMRK Art. 6, No. 865.

		d) To safeguard the accused's rights under the law of criminal procedure, all essential occurrences and statements shall be interpreted <sup>13</sup> . For this purpose, an interpreter shall be called in without delay; the main hearing shall not be conducted without his/her presence. In practice, difficulties have not been observed in this context. <sup>14</sup>
1.1.3	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	a) If the accused is arrested, pursuant to Section 115 StPO he/she shall be brought before the competent court and be examined. In this case, the examining judge takes the decision on whether or not to call in an interpreter <sup>15</sup> .  As long as the accused is in remand detention, he may at any time apply for a court hearing as to whether the warrant of arrest is to be revoked or its execution is to be suspended in accordance with Section 116 (Section 117 StPO). The judge who is responsible for this decision also determines the need for interpretation. <sup>16</sup>
		b) The same applies as described under 1.1.2 b). <sup>17</sup>
		c) Reimbursement of services provided by interpreters, is paid by the Treasury pursuant to the Judicial Remuneration and Compensation Act (JVEG).
		d) The same applies as described under 1.1.2.d).

<sup>13</sup> Meyer-Goßner, L. (2014), ‚Strafprozessordnung‘, München, C.H. Beck § 185 GVG No. 5.

<sup>14</sup> Germany, representative of the DAV.

<sup>15</sup> Krauß, D. in: Graf, J.-P. (2014), ‚Beck'scher Online-Kommentar zur Strafprozessordnung, Edition 19‘, München, C.H. Beck, § 115 StPO No.5.

<sup>16</sup> Germany, representative of the DAV.

<sup>17</sup> Germany, representative of the DAV.

<p>1.1.4</p>	<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) It is recognised by the Federal Constitutional Court<sup>18</sup> and the Federal Court of Justice<sup>19</sup> that the accused can demand an interpreter for any communication with his or her legal counsel, according to the rule that an interpreter is provided insofar as this is necessary for the exercise of the accused's rights under the law of criminal procedure, and as well in compliance with Art. 6 (3) (e) European Convention on Human Rights (ECHR)<sup>20</sup>. During the preliminary proceedings, the legal counsel has to determine the need of interpretation and contract an interpreter if necessary. According to a decision of the Federal Constitutional Court, the accused's right to an interpreter may not be made conditional upon a formal application in advance.<sup>21</sup> However, a court decision at any time during the proceedings is necessary for reimbursement, see below 1.1.4.c).</p> <p>b) In practice, the decision whether or not to call in an interpreter is made by the defence counsel. The interpreter can be charged directly by the counsel. In this case, the counsel as the interpreter's customer has to cover his/her costs. It is reported that it is treated in a different manner by the individual courts whether they request a prior application. Details cannot be provided because there is no "official" application procedure. Lawyers report that some courts want an (informal) application in advance.</p> <p>By some courts, interpretation is only granted for a several number of hours.<sup>22</sup></p> <p>c) Reimbursement of services provided by interpreters is paid by the Treasury if the court decides that interpretation is necessary for the exercise of the accused's rights. If an interpreter was charged and reimbursed by the accused's legal counsel, he/she can claim compensation from the Treasury in accordance with the Act on the Remuneration of Attorneys (Rechtsanwaltsvergütungsgesetz, RVG). Therefore, it is not necessary that an application to the court was submitted in advance. However, a court decision confirming the need of interpretation is necessary during the proceedings for reimbursement. To avoid problems in this context, lawyers report from practice that they make prior applications when this is requested by courts.</p> <p>In practice, there are no problems stated<sup>23</sup> concerning the bearing of cost, apart from those described under 1.1.4 b).</p>
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<sup>18</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 2 BvR 2032/01, 27 August 2003.

<sup>19</sup> Germany, Federal Court of Justice (*Bundesgerichtshof*), 3 StR 6/00 26 October 2000.

<sup>20</sup> Esser, R. in: Rieß, Peter (2012), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“*, Berlin, de Gruyter, EMRK Art. 6, No. 850.

<sup>21</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 2 BvR 2032/01, 27 August 2003.

<sup>22</sup> Germany, representative of the DAV.

<sup>23</sup> Germany, representative of the DAV.

		d) There are no regulations. In order to safeguard an effective defence, an interpreter shall be called in without delay to enable a proper communication. <sup>24</sup>
1.2	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>	In case that there are no interpreters available, authorities do use native speakers of the language they interpret into. The authorities often have own lists of interpreters for rare known languages. In case that there is no one available right away, e.g. because the accused speaks a rare dialect, the demand can be made publicly accessible. . For example, in the proceedings that took place in Hamburg in 2012 against Somali pirates who attacked a German ship, three taxi drivers from Flensburg (Germany) were appointed for the interpretation into a rare Somali dialect. <sup>25</sup>
1.3	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 practitioners.</b>	There are no special procedural rules for challenging the decision that no interpretation is necessary. The available complaints depend on the stage of the proceedings. The preliminary proceedings mean the phase before a formal accusation has been made by the public prosecution office and the main hearings have been opened by the court. If interpretation is refused by court in this phase, the accused can complain about this decision; thus, the court has to make an order. Admissible remedy for such order is the complaint to the next higher court (section 304 StPO). <sup>26</sup> If interpretation is refused by the police or the prosecution office, a procedure to challenge this decision is not legally prescribed. In cases of procedural errors, the accused can reprove the infringement of his or her rights at the main hearing before court. The statements made to the police or prosecution office might, in some cases, not be used for evidence then. Up to now, there is no case law available concerning the consequences of such procedural error. Neither has this been made a subject of discussion in the legal literature.  However, from the time when the main proceedings have been opened, the complaint is inadmissible against most decisions of the adjudicating courts prior to judgment (section 305 StPO), including the decision about interpretation. <sup>27</sup> The accused can only <b>appeal</b>

<sup>24</sup> Esser, R. in: Rieß, Peter (2012), ‚Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR‘, Berlin, de Gruyter, EMRK Art. 6, No. 853.

<sup>25</sup> Germany, representative of the DAV.

<sup>26</sup> Esser, R in: Rieß, Peter (2014), ‚Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 7/1‘, Berlin, de Gruyter, § 304 StPO, No. 62.

<sup>27</sup> Germany, Higher Regional Court (Kammergericht) Berlin, 1 AR 1424/96, 11 August 1997; Christl, E. (2014), ‚Europäische Mindeststandards für Beschuldigtenrechte – Zur Umsetzung der EU-Richtlinien über Sprachmittlung und Information im Strafverfahren, ‚Neue Zeitschrift für Strafrecht (NStZ) 2014‘, pp 376-383.

		<p>against the judgment with the procedure of appeal on law (Section 333 StPO).<sup>28</sup> Thus, prior to the conclusion of the proceedings, there is no procedure to challenge the refusal of interpretation.</p> <p>The appeal on law is deemed a sufficient complaint procedure by some authors of legal literature<sup>29</sup>, referring to recital 25 of the Directive, which states that there is no obligation for Member States to provide for a separate mechanism or complaint procedure.</p> <p>On the contrary, the lack of procedure rules in the amendment of national law is criticised by the German Bar association (DAV) in a written comment<sup>30</sup>. Restricting the challenge of the decision about interpretation to the procedure of appeal on law is not considered sufficient to accomplish the Directive.</p> <p>In practice, cases seem to be rather limited in numbers where courts do not call in an interpreter even though the accused insisted to do so. Problems seem to appear mainly concerning the quality of interpretation, see below 3.2 b)<sup>31</sup>. However, some problems are reported concerning the determination whether an interpreter is necessary, e.g. if courts doubt the accused's inability to communicate in German.<sup>32</sup></p>
1.4	With regard to remote interpretation via communication technologies :	
	a) Can communication technologies for the purpose of remote interpretation be used? If	Section 185 (1a) GVG states that the court may permit the interpreter to remain in another place during the proceeding, hearing or examination. There shall be simultaneous audio-visual transmission of the proceeding, hearing or examination to such place and to the courtroom. The federal state's governments are authorised (Art. 9 of the amending law dated 25 april 2013) <sup>33</sup> to determine the inapplicability of this rule until the end of 31 December 2017.

<sup>28</sup> Meyer-Goßner, L. (2014), ‚Strafprozessordnung‘, München, C.H. Beck, § 185 GVG No. 10.

<sup>29</sup> Christl, E. (2014), ‚Europäische Mindeststandards für Beschuldigtenrechte – Zur Umsetzung der EU-Richtlinien über Sprachmittlung und Information im Strafverfahren, ‚*Neue Zeitschrift für Strafrecht (NSTZ) 2014*‘, pp 376-383. Remark: The author was employee of the German Federal Ministry of Justice and was jointly responsible for the transposition of the Directives 2010/64/EU.

<sup>30</sup> German Bar Association (*Deutscher Anwaltverein, DAV*) (2013), ‚*Stellungnahme durch den Ausschuss Strafrecht zum Gesetzentwurf zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren (BR-Drs. 816/12)*‘, February 2013, available at: <http://anwaltverein.de/downloads/Stellungnahmen-11/DAV-SN11-12.pdf>.

<sup>31</sup> Germany, representative of the DAV.

<sup>32</sup> Germany, representative of the DAV.

<sup>33</sup>Germany, (Act on intensifying the use of video-conferencing technology in pre-trial investigations and judicial proceedings (*Gesetz zur Intensivierung des Einsatzes von Videokonferenztechnik in gerichtlichen und staatsanwaltschaftlichen Verfahren*), 25.04.2013, available at:

[/www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&start=//\\*\\*%255B@attr\\_id=%27bgb1113s0935.pdf%27%255D#\\_\\_bgbl\\_\\_%2F%2F\\*\[%40attr\\_id%3D%27bgb1113s0935.pdf%27\]\\_\\_1427807947127](http://www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//**%255B@attr_id=%27bgb1113s0935.pdf%27%255D#__bgbl__%2F%2F*[%40attr_id%3D%27bgb1113s0935.pdf%27]__1427807947127).

<p>so, at what stage(s) of the proceedings?</p>	<p>During hearings and examinations by the police or the public prosecution offices, it is recognised by the legislature and the courts that the use of communication technologies is legally permissible without explicit rules.<sup>34</sup></p>
<p>b) Which technologies are used, if any (videoconference, telephone, internet, etc.)</p>	<p>The only technology mentioned in the relevant acts (GVG / StPO) is videoconference.</p>
<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>Via the e-Justice Portal, a list with information on German courts with videoconferencing equipment is available. The relevant courts in question stated that, in practice, videoconferencing is actually applied. They receive requests from abroad. Some courts knew about the list on the e-Justice Portal, others did not.<sup>35</sup></p> <p>The interviewed professional associations Federal Association of Interpreters and Translators (BDÜ)<sup>36</sup> and German Bar Association (DAV)<sup>37</sup> stated that in practice, videoconference is applied sometimes. The e-Justice Portal seems to be largely unknown.</p>

<sup>34</sup> Meyer-Goßner, L. (2014), ‚Strafprozessordnung‘, München, C.H. Beck, § 185 GVG No. 8a.; Germany, Act on intensifying the use of video-conferencing technology in pre-trial investigations and judicial proceedings (*Gesetz zur Intensivierung des Einsatzes von Videokonferenztechnik in gerichtlichen und staatsanwaltschaftlichen Verfahren*), 25.04.2013, available at:

[/www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&start=//%255B@attr\\_id=%27bgbl113s0935.pdf%27%255D#\\_bgbl\\_%2F%2F\\*\[%40attr\\_id%3D%27bgbl113s0935.pdf%27\]\\_1427807947127](http://www.bgbl.de/banzxaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//%255B@attr_id=%27bgbl113s0935.pdf%27%255D#_bgbl_%2F%2F*[%40attr_id%3D%27bgbl113s0935.pdf%27]_1427807947127).

<sup>35</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

<sup>36</sup> Germany, representative of the Federal Association of Interpreters and Translators (BDÜ). The BDÜ is the largest professional association of interpreters and translators in Germany with a membership of over 7,500 translators and interpreters. It represents about 80% of all translators and interpreters who belong to a professional association in Germany.

<sup>37</sup> Germany, representative of the DAV.

	<b>TRAINING<sup>38</sup></b>	<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
<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 as to ensure efficient and effective communication? If yes, briefly provide details.		X	<p>The Federal Ministry of Justice that is responsible for the transposition of the Directive did not request the providers of judicial training to pay special attention to the communication with interpreters.<sup>39</sup> The Bund is not generally involved in judicial training; the Federal States (Länder) are in charge of this issue. The German Judge's Academy, providing training for judges and prosecution officers, develops its programme with representatives of the Federal administrations of justice. In 2012, there was a seminar which dealt, among other things, with the communication with foreign parties to the proceedings and interpreters. Thereafter, such program could not be found.</p> <p>The BDÜ stated<sup>40</sup> that they would appreciate receiving requests by judicial authorities, but up to now, this has not happened. The DAV<sup>41</sup> does not mention this topic because, from the lawyers' point of view, there do not seem to be practical problems.</p>

<b>2.</b>	<b>RIGHT TO TRANSLATION OF DOCUMENTS<sup>42</sup></b>	<b>Brief Description</b>
<b>2.1</b>	<p><b>Please provide answers to the following for each stage of proceedings as indicated below:</b></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><b>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</b></p>	

<sup>38</sup> See in particular Article 6 and relevant recitals of Directive 2010/64/EU.

<sup>39</sup> Germany, representative of the Federal Ministry of Justice.

<sup>40</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln .

<sup>41</sup> Germany, representative of the DAV.

<sup>42</sup> See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

<p>2.1.1</p>	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p><b>Preliminary note:</b></p> <p>Section 187 (1) GVG, which applies to the entire criminal proceedings, states the provision of the translation of documents insofar as this is necessary for the exercise of the accused's rights under the law of criminal procedure. Beyond this, in accordance with the European Court of Human Rights' (ECtHR) case-law on Article 6 ECHR, the German courts have recognised that a translation of all those documents shall be provided which need to be understood to safeguard the fairness of the proceedings. Which documents shall be included thereof, must be decided on a case-by-case basis.<sup>43</sup></p> <p>However, since the amendment of Section 187 GVG<sup>44</sup>, subsection (2) reads: "As a rule, a written translation of custodial orders as well as of bills of indictment, penal orders and non-binding judgments shall be necessary for the exercise of the rights under the law of criminal procedure of an accused who does not have a command of the German language. As a rule, a written translation of custodial orders as well as of bills of indictment, penal orders and non-binding judgments shall be necessary for the exercise of the rights under the law of criminal procedure of an accused who does not have a command of the German language. An excerpted written translation shall be sufficient if the rights of the accused under the law of criminal procedure are thereby safeguarded. The written translation shall be made available to the accused without delay. An oral translation of the documents or an oral summary of the content of the documents may be substituted for a written translation if the rights of the accused under the law of criminal procedure are thereby safeguarded. The law states that this can be assumed if the accused has a defence counsel."</p> <p>Thus, according to this, it will be possible to refrain from providing written translations in the majority of cases when the accused has a legal counsel.</p> <p>This rule laid down in Section 187 (2) (5) GVG is the subject of explicit criticism from professional associations and academicians. The DAV<sup>45</sup>, the New Judges Association (NRV)<sup>46</sup> and the BDÜ<sup>47</sup> as well as authors of legal literature<sup>48</sup> consider this rule an infringement of Directive 2010/64/EU.</p>
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<sup>43</sup> Allgayer, F. in: Graf, J.-P. (2014), *Beck'scher Online-Kommentar zur Strafprozessordnung, Edition 19'*, München, C.H. Beck, § 187 GVG No. 2.

<sup>44</sup> See footnote 2 above.

<sup>45</sup> German Bar Association (Deutscher Anwaltverein, DAV) (2013), *'Stellungnahme durch den Ausschuss Strafrecht zum Gesetzentwurf zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren (BR-Drs. 816/12)*, February 2013, available at: <http://anwaltverein.de/downloads/Stellungnahmen-11/DAV-SN11-12.pdf>. For information about the association, see above footnote 6.

<sup>46</sup> New Association of Judges (*Neue Richtervereinigung – Zusammenschluss von Richterinnen und Richtern, Staatsanwältinnen und Staatsanwälten e.V., NRV*) (2013), *'Stellungnahme der Fachgruppe „Interkulturelle Kommunikation“ der Neuen Richtervereinigung e.V. zur Umsetzung der Richtlinie 2010/64/EU des Europäischen Parlaments und des Rates vom 20. Oktober 2010 über das Recht auf Dolmetscherleistungen und Übersetzungen in Strafverfahren durch das Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren'*, 19 February 2013, available at [www.neuerichter.de/details/artikel/article/umsetzung-der-eu-rl-ueber-das-recht-auf-dolmetschleistungen-und.html](http://www.neuerichter.de/details/artikel/article/umsetzung-der-eu-rl-ueber-das-recht-auf-dolmetschleistungen-und.html). The New Association of Judges is an association of judges and prosecutors with a total of 550 members.

They emphasize that the Directive aims at written translation of all documents to be regularly provided. In the Directive, there is no indication for the sufficiency of oral translations or oral summaries of documents in cases when the accused has a defence counsel.

a) If the accused is in liberty, additional to the regulation in Section 187 (2) GVG, No. 181 Internal guidelines for criminal proceedings and fine proceedings (Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV)<sup>49</sup> advises the translation of summons to appear. These guidelines are general administrative regulations giving binding instructions to the police and the prosecution authorities, but are not binding on the courts<sup>50</sup>.

In case of arrest, pursuant to Section 114b (1) StPO, the accused shall be instructed as to his rights in writing in a language he/she understands. Thus, a translation of a letter of rights is provided.

Further, pursuant to Section 187 (2) GVG a written translation of custodial orders is legally defined as necessary. If the accused is arrested on basis of an arrest warrant, Section 114a StPO reads: A copy of the warrant of arrest shall be handed over to the accused at the time of his arrest; if he does not have a sufficient command of the German language he shall additionally be provided with a translation in a language he understands. If it is not possible for a copy and, where necessary, a translation to be handed over to him, he must be informed without delay, in a language he understands, of the grounds for his arrest and the accusations levied against him. In that case the copy of the warrant of arrest and, where necessary, a translation shall subsequently be handed over to him without delay.

In practice, written translations of the letter of rights and documents which the accused needs to sign (see below 2.4) are regularly provided. It is reported that custodial orders, in particular warrants of arrest, are often, but not always, translated in writing. Other documents are interpreted orally by an interpreter.<sup>51</sup>

<sup>47</sup> Federal Association of Interpreters and Translators (*Bundesverband der Dolmetscher und Übersetzer e.V., BDÜ*) (2013), *Unzureichende Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren im neuen Gesetz*, 17 May 2013, available at [www.bdue.de/der-bdue/aktuell/news-detail/?tx\\_ttnews\[tt\\_news\]=1937&cHash=25ae2f9cd64c0f6920fe2cbd05ac86bb](http://www.bdue.de/der-bdue/aktuell/news-detail/?tx_ttnews[tt_news]=1937&cHash=25ae2f9cd64c0f6920fe2cbd05ac86bb).

<sup>48</sup> Eisenberg, U. (2013) 'Gesetz zur Stärkung der Verfahrensrechte Beschuldigter im Strafverfahren' – Bedeutung und Unzutraglichkeiten, *Juristische Rundschau (JR) 2013*, pp 442-451; Yalçın, Ü. (2013) „Das Stigma des Finanzierungsvorbehalts - Stärkung der Beschuldigtenrechte im Strafverfahren“, *Zeitschrift für Rechtspolitik (ZRP) 2013*, pp 104 - 107.

<sup>49</sup> Germany, Internal guidelines for criminal proceedings and fine proceedings (*Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV*), 01.01.1997, available at: [www.verwaltungsvorschriften-im-internet.de/bsvwvbund\\_01011977\\_420821R5902002.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_01011977_420821R5902002.htm).

<sup>50</sup> Krauß, D. in: Rieß, Peter (2014), „Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 10: GVG, EGGVG“, Berlin, de Gruyter, § 187 GVG No. 9.

<sup>51</sup> Germany, representative of the DAV.

		<p>b) The situation is the same as described above under 1.1.1 c). In practice, there do not seem to be problems concerning the bearing of cost; however, translations are only rarely provided.<sup>52</sup></p>
		<p>c) Pursuant to Section 187 (2), the written translation shall be made available to the accused without delay. In case of arrest, the translation of the arrest warrant shall be provided at the time of detention<sup>53</sup>; however, in most cases there is only an oral translation provided.</p>
<p>2.1.2</p>	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) In accordance with the rule that an oral translation of the documents or an oral summary of the content of the documents may be substituted for a written translation if the rights of the accused under the law of criminal procedure are thereby safeguarded (Section 187 (2) GVG). In practice, a written translation of the bill of indictment is provided. Further, documents are translated in cases when the reading of documents at the hearings is dispensed: In general, all documents have to be read out at the main hearing; in some cases when all participants gained knowledge otherwise, , the requirement of reading the documents in the main hearing can be exceptionally waived (Section 249 (2) StPO). If so, a written translation is provided in practice.<sup>54</sup> When the oral translation of documents is waived, the written will be provided but if it is not waived, the written translation will not follow.</p> <p>In addition, the federal states (Länder) provide information about available legal remedies in several (up to 45) languages. When courts receive writings in foreign languages from participants of the proceedings, most courts translate the writings and take them into consideration. In practice some courts do not accept writings in foreign languages, because Section 184 (1) GVG reads “the language of the court shall be German.” However, in cases where the writing was necessary to observe a time limit, these courts grant restoration of the status quo ante (Section 44 StPO), which means they grant a further possibility to observe the time limit. .<sup>55</sup></p> <p>The translation of further documents, e.g. crucial material of the file, can be provided on case-by-case-basis. However, in practice, translations are rarely considered necessary.<sup>56</sup></p> <p>Regarding the translation of judgements, in the recent case law there is a recognisable trend to not provide translations when the</p>

<sup>52</sup> Germany, representative of the DAV.

<sup>53</sup> Krauß, D. in: Rieß, Peter (2014), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 10: GVG, EGGVG“*, Berlin, de Gruyter, § 187 GVG No. 15.

<sup>54</sup> Germany, representative of the DAV.

<sup>55</sup> Germany, representative of the Federal Ministry of Justice.

<sup>56</sup> Germany, representative of the DAV.

		<p>accused has a defense counsel<sup>57</sup>. This application of law has been criticised in the legal literature, apart from the doubts as to the lawfulness of the scheme, described under 2.1.1. When an accused has no possibility to comprehend the reasons of his conviction by reading the judgement, this case-law is alleged to not meet the requirements of the right to a fair trial.<sup>58</sup></p> <p>As described in the grounds of law, it is assumed that an interpreter shall give a translation of the judgement during a meeting between accused and the defence counsel<sup>59</sup>. Upon request, the BDÜ stated that this is rarely guaranteed in practice<sup>60</sup>. Usually there is only an oral translation of the primary reasons given for the conviction during the pronouncement of judgement. The BDÜ pointed out that in this situation of emotional distress, it is difficult to follow and assess what has been heard.<sup>61</sup> Further, it is reported that problems can arise concerning the enforcement of a prison sentence. For the purpose of facilitating the social rehabilitation of the sentenced person, it is important that the convict does understand the details of the judgement: The judgment shall contain information on the background of the offence, the convict's personality and the problems on which the convict is supposed to work during the prison sentence. The BDÜ stresses that without a written translation, the convict cannot really reflect on these details. This makes it harder to achieve progresses. <sup>62</sup></p> <p>b) Costs of services provided by translations are paid by the Treasury.<sup>63</sup> However, in case that there is not provided a written but only an oral translation, especially in case of non-binding judgements, according to the grounds of the Law this translation might be given during a meeting between accused and the defence counsel. The DAV highlights<sup>64</sup> that due to the fact that in some cases the accused has to pay for the defence counsel's work, this means the accused indirectly bears the costs of translation.</p> <p>c) Pursuant to Section 187 (2), the written translation shall be made available to the accused without delay; beyond this, there are no strict regulations. A translation of the bill of indictment is usually made available, at the latest, at the commencement of the main hearings.<sup>65</sup></p>
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<sup>57</sup> Germany, Higher Regional Court (*Oberlandesgericht*) Stuttgart, 6 – 2 StE 2/12, 09 January 2014; Germany, Higher Regional Court (*Oberlandesgericht*) Hamburg, 2 Ws 253/13, 06 December 2013, Germany, Higher Regional Court (*Oberlandesgericht*) Hamm, III-2 Ws 40/14, 11 March 2014; Bockenmühl, J. (2014), Anmerkung zu Urteilen, 'Strafverteidier (StV) 2014', pp 536 – 539.

<sup>58</sup> Bockenmühl, J. (2014), Anmerkung zu Urteilen, 'Strafverteidier (StV) 2014', pp 536 – 539.

<sup>59</sup> See footnote 2.

<sup>60</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

<sup>61</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

<sup>62</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

<sup>63</sup> Esser, R. in: Rieß, Peter (2012), *Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR*, Berlin, de Gruyter, EMRK Art. 6, No. 865 ff.

<sup>64</sup> German Bar Association (*Deutscher Anwaltverein, DAV*) (2013), 'Stellungnahme durch den Ausschuss Strafrecht zum Gesetzentwurf zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren (BR-Drs. 816/12)', February 2013, available at: <http://anwaltverein.de/downloads/Stellungnahmen-11/DAV-SN11-12.pdf>, p. 10..

<sup>65</sup> Germany, representative of the DAV.

2.1.3	<ul style="list-style-type: none"> <li>any necessary interim hearings;</li> </ul>	a) There are no special regulations apart from what has been said above under 2.1.1 a) and 2.1.2 a).
		b) Costs of provided translations are paid by the Treasury. <sup>66</sup>
		c) Pursuant to Section 187 (2), the written translation shall be made available to the accused without delay; beyond this, there are no strict regulations.
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>	a) In normal cases, the translation of documents is not assumed as necessary for the communication between the accused and his/her legal counsel. Consulting an interpreter for meetings is generally considered sufficient. However, the need of translation of documents must be decided on a case-by-case basis. <sup>67</sup> Thus, translations have been exceptionally provided, e.g. when the accused was in remand detention and wrote down detailed descriptions for the defence counsel's preparation. <sup>68</sup>
		b) Reimbursement of services provided by interpreters is paid by the Treasury if court decides that interpretation is necessary for the exercise of the accused's rights. <sup>69</sup>
		c) Pursuant to Section 187 (2), the written translation shall be made available to the accused without delay.

<sup>66</sup> Esser, R. in: Rieß, Peter (2012), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“*, Berlin, de Gruyter, EMRK Art. 6, No. 865 ff.

<sup>67</sup> Allgayer, F. in: Graf, J.-P. (2014), *„Beck'scher Online-Kommentar zur Strafprozessordnung, Edition 19“*, München, C.H. Beck § 187 GVG No. 2; Christl, E. (2014), *„Europäische Mindeststandards für Beschuldigtenrechte – Zur Umsetzung der EU-Richtlinien über Sprachmittlung und Information im Strafverfahren, „Neue Zeitschrift für Strafrecht (NStZ) 2014“*, pp 376-383.

<sup>68</sup> Germany, Higher Regional Court (*Oberlandesgericht*) Frankfurt, 2 Ws 117/05, 13 October 2005.

<sup>69</sup> Esser, R. in: Rieß, Peter (2012), *„Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“*, Berlin, de Gruyter, EMRK Art. 6, No. 851.

2.2	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-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	The decision is made by competent authorities to their discretion; <sup>70</sup> there are no further guidelines. According to the aforesaid, oral translation is the normal case in practice. Beyond this, further explanations are sometimes given orally when the accused does obviously not understand the written translations. <sup>71</sup>		
2.3	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>	The same applies as described under 1.3.		
		Yes	No	Brief Description
2.4	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?	x		This is not legally prescribed, but, however, appears to be the case in practise. <sup>72</sup>
2.5	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?	x		Pursuant to Section 187 (3) GVG, the accused may only effectively waive a written translation if he has been instructed beforehand concerning his right to a written translation and concerning the consequences of a waiver of a written translation. The instruction and the waiver of the accused shall be documented (Section 187 (3) GVG).

<sup>70</sup> Esser, R. in: Rieß, Peter (2012), „Löwe/Rosenberg Die Strafprozessordnung und das Gerichtsverfassungsgesetz: StPO, Band 11 – EMRK; IPBPR“, Berlin, de Gruyter EMRK Art. 6, No. 860 ff.

<sup>71</sup> Germany, representative of the DAV.

<sup>72</sup> Germany, representative of the DAV.

3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION <sup>73</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?	x		There is a national database, in which interpreters and translators can get listed when they have been generally sworn for translations or are publicly appointed pursuant to the provisions of the federal state's ( <i>Land</i> ) law. The database is available at <a href="http://www.justiz-dolmetscher.de/">http://www.justiz-dolmetscher.de/</a> .
	b) Do translators and interpreters have to be listed in databases/registers for their services to be used? In other words, is membership/registration mandatory?		x	<p>It is not legally prescribed that only interpreters and translators listed may be used in criminal proceedings. In the database, there are only interpreters and translators listed who have been generally sworn or been publicly appointed. Pursuant to Section 189 GVG, interpreters and translators used at court hearings – not at police questioning – have to swear an oath affirming that they will translate faithfully and conscientiously. However, this can be done by all persons interpreting or translating in proceedings, not only by those listed in the database. Several associations criticise the not uncommon practice to use interpreters and translators who are not sufficiently qualified, mainly for cost reasons<sup>74</sup>. It is reported that this is done by courts, but in particular by the police.</p> <p>Before the adoption of the Directive 2010/64/EU, the BDÜ recommended<sup>75</sup> the establishment of clearly defined standards for interpreters/translators used in criminal proceedings. In the Bad Boll Declaration 2011, a joint statement published by several important professional associations, this request was confirmed<sup>76</sup>. During and after the legislative</p>

<sup>73</sup> See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

<sup>74</sup> New Association of Judges (*Neue Richtervereinigung – Zusammenschluss von Richterinnen und Richtern, Staatsanwältinnen und Staatsanwälten e.V., NRV*) (2013), 'Stellungnahme der Fachgruppe „Interkulturelle Kommunikation“ der Neuen Richtervereinigung e.V. zur Umsetzung der Richtlinie 2010/64/EU des Europäischen Parlaments und des Rates vom 20. Oktober 2010 über das Recht auf Dolmetscherleistungen und Übersetzungen in Strafverfahren durch das Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren', 19 February 2013, available at [www.neuerichter.de/details/artikel/article/umsetzung-der-eu-ri-ueber-das-recht-auf-dolmetschleistungen-und.html](http://www.neuerichter.de/details/artikel/article/umsetzung-der-eu-ri-ueber-das-recht-auf-dolmetschleistungen-und.html).

<sup>75</sup> Federal Association of Interpreters and Translators (*Bundesverband der Dolmetscher und Übersetzer e.V., BDÜ*) (2010), 'Stellungnahme des Bundesverbandes der Dolmetscher und Übersetzer e.V. zu den Entwürfen für eine Richtlinie über die Rechte auf Dolmetschleistungen und auf Übersetzungen in Strafverfahren (Ratsdokument PE-CONS 1/10 sowie Kommissionsdokument 2010/0050)', 23 March 2010, available at: [www.bdue.de/uploads/media/1732\\_Positionspapier\\_BDUe\\_23.03.2010.pdf](http://www.bdue.de/uploads/media/1732_Positionspapier_BDUe_23.03.2010.pdf).

<sup>76</sup> Evangelische Akademie Bad Boll in Kooperation: mit Bundesverband der Übersetzer und Dolmetscher (BDÜ), Deutscher Anwaltverein (DAV), Deutscher Juristinnenbund (djb), Deutscher Richterbund (DRB), Neue Richtervereinigung (NRV), 'Bad Boller Erklärung (2011) zur interkulturellen Kompetenz in der deutschen Justiz', October 2011, available at: [www.neuerichter.de/fileadmin/user\\_upload/fg\\_interkulturelle\\_kommunikation/FG-IK-2011-09-19\\_Bad\\_Boll.pdf](http://www.neuerichter.de/fileadmin/user_upload/fg_interkulturelle_kommunikation/FG-IK-2011-09-19_Bad_Boll.pdf).

				amendment procedure, the NRV <sup>77</sup> , the BDÜ <sup>78</sup> as well as a wide range of the most important associations together by the Bad Boll Declaration 2013 <sup>79</sup> , criticised a lack of quality standards which had not been implemented in the legislative amendment.
	c) Who has access to these databases?			The database is accessible to the public at <a href="http://www.justiz-dolmetscher.de/">http://www.justiz-dolmetscher.de/</a> .
	d) Which professional qualifications are needed by: <ul style="list-style-type: none"> <li>• translators and</li> <li>• interpreters</li> </ul> in order to be registered in the database?			<p><b>Brief Description:</b> To lay down conditions for public appointment and affirming by oath, which is the precondition for being registered in the database, is the responsibility of the Länder (federal states). Pursuant to most of the state legislatures, an examination must be passed. In some laws, other evidence of qualification can be sufficient, e.g. a proven professional experience, especially when an examination for the language concerned is not available.<sup>80</sup></p> <p>The laws of some federal states are considered insufficient by the BDÜ, highlighting that in some cases interpreters and translators that are not sufficiently qualified are generally sworn or publicly appointed.<sup>81</sup></p>
	e) Are there any requirements in place to ensure the independence of interpreters and translators? If yes, provide a brief overview (for both translators and interpreters).	x		<p>Interpreters and translators used at court hearings have to swear an oath affirming that they will translate faithfully and conscientiously. In case that they do intentionally translate incorrectly, can be penalised of perjury. For interpreters used at examinations conducted by the police or the prosecution office, there is no legal obligation to swear this oath.</p> <p>Pursuant to Section 189 (4) GVG, interpreters and translators shall observe secrecy concerning circumstances that become known to them in their professional capacity. The court shall advise the interpreters and translators of this fact.</p>

<sup>77</sup> New Association of Judges (*Neue Richtervereinigung – Zusammenschluss von Richterinnen und Richtern, Staatsanwältinnen und Staatsanwälten e.V., NRV*) (2013), 'Stellungnahme der Fachgruppe „Interkulturelle Kommunikation“ der Neuen Richtervereinigung e.V. zur Umsetzung der Richtlinie 2010/64/EU des Europäischen Parlaments und des Rates vom 20. Oktober 2010 über das Recht auf Dolmetscherleistungen und Übersetzungen in Strafverfahren durch das Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren', 19 February 2013, available at: [www.neuerichter.de/details/artikel/article/umsetzung-der-eu-ri-ueber-das-recht-auf-dolmetschleistungen-und.html](http://www.neuerichter.de/details/artikel/article/umsetzung-der-eu-ri-ueber-das-recht-auf-dolmetschleistungen-und.html).

<sup>78</sup> Federal Association of Interpreters and Translators (*Bundesverband der Dolmetscher und Übersetzer e.V., BDÜ*) (2013), *Unzureichende Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren im neuen Gesetz*, 17 May 2013, available at [www.bdue.de/der-bdue/aktuell/news-detail/?tx\\_ttnews\[tt\\_news\]=1937&cHash=25ae2f9cd64c0f6920fe2cbd05ac86bb](http://www.bdue.de/der-bdue/aktuell/news-detail/?tx_ttnews[tt_news]=1937&cHash=25ae2f9cd64c0f6920fe2cbd05ac86bb).

<sup>79</sup> Evangelische Akademie Bad Boll in Kooperation mit: Assoziierte Dolmetscher und Übersetzer in Norddeutschland e.V. (ADÜ-Nord), Fachverband der Berufsübersetzer und Berufsdolmetscher e.V. (ATICOM), Bundesverband der Übersetzer und Dolmetscher (BDÜ), Europäischer Verband der Gerichtsdolmetscher und Übersetzer (EULITA), Deutscher Anwaltverein (DAV), Deutscher Juristinnenbund (djb), Deutscher Richterbund (DRB), Neue Richtervereinigung (NRV), Bund Deutscher Rechtspfleger (BDR), *Bad Boller Erklärung (2013) zur Umsetzung der Richtlinie 2010/64/EU*, February 2013, available at: [www.djb.de/static/common/download.php/save/1293/pm13-6\\_Dolmetschen-in-Strafverfahren\\_Forderungskatalog.pdf](http://www.djb.de/static/common/download.php/save/1293/pm13-6_Dolmetschen-in-Strafverfahren_Forderungskatalog.pdf).

<sup>80</sup> The different requirements for the accreditation are listed here (German):

[www.justiz-dolmetscher.de/voraussetzungen.jsp;jsessionid=5B5D5E840C5447489D1A55D5833BFD7F](http://www.justiz-dolmetscher.de/voraussetzungen.jsp;jsessionid=5B5D5E840C5447489D1A55D5833BFD7F)

<sup>81</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

				The obligation to observe secrecy applies to interpreters used at examinations conducted by the police or the prosecution office, too (Section 163a (5) StPO in conjunction with Section 189 (4) GVG).
	f) Is access to existing databases provided through the <a href="https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-de-en.do?member=1">European e-Justice portal</a> ? <sup>82</sup> How is this register available to legal counsel and relevant authorities?	x		Yes, <a href="https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-de-en.do?member=1">https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-de-en.do?member=1</a> . The website is accessible to the public.
	g) Are criminal justice institutions required to use interpreters and translators listed in these registers?		x	Not generally. In some Länder (federal states), such requirements exist, e.g. in the form of recommendations addressed to the police, prosecution offices and the courts. <sup>83</sup> However, different professional associations indicate that institutions as police offices and courts do, in practice, use their own internally generated lists with interpreters and translators frequently used. <sup>84</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?		x	See 3.1. e). In practise, lawyers criticise that the close and regular collaboration of some interpreters with the police and the courts might generate problems concerning the understanding of their own occupational role: It is feared that they might perceive the police as their employers in whose interest they act, and, thus, work less objectively. <sup>85</sup> Quality checks are not mandatory; in practice, the defence lawyers need to raise complaints regarding insufficient interpretation or translation at the main hearings.
	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	x		Section 191 GVG states that interpreters and translators can be rejected by the court according to the provisions applicable to experts. Experts can be challenged for fear of bias when there is reason to doubt the impartiality of the expert (Section 74 (1) in conjunction with Section 24 (2) StPO). When the accused exercises the right of challenge, the decision is made by the court or by the judge who called in the interpreter. Against this order, a complaint to the next higher court is admissible (Section 304 StPO). <sup>86</sup>

<sup>82</sup> <https://e-justice.europa.eu/home.do?plang=en&action=home>

<sup>83</sup> Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

<sup>84</sup> See 3.1.b), Germany, representatives of the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

<sup>85</sup> Germany, representative of the DAV.

<sup>86</sup> Meyer-Goßner, L. (2014), *„Strafprozessordnung“*, München, C.H. Beck, § 74 StPO No. 20.

	quality and independence of the interpretation and translation?			In case of inadequate quality of interpretation or translation, there is no special complaint procedure. If the accused complains about the quality of interpretation or translation, the court can, of course, charge another interpreter or translator. In case it does not consider this necessary, the accused can only appeal against the judgment with the procedure of appeal on law (Section 333 StPO). In practice, however, it is reported that it is difficult for the parties or the accused to understand whether their wording has been translated correctly.: Often, the parties to the proceedings cannot assess whether the interpretation is correct and unbiased. The accused who does not understand the German translation will not be able to notice whether or not it has been translated correctly, neither will the defence counsel who has not a command of the foreign language. <sup>87</sup>
	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 interpretation or the independence of the interpreter is considered insufficient? If yes, briefly provide information.	x		Replacement can be ordered by the court at its discretion. Further, see above 3.2.b).
<b>3.3</b>	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>88</sup> If yes, briefly provide information on those mechanisms considering the following vulnerable groups:			
	a) suspect or accused persons with physical impairment or disability;	x		According to Section 186 GVG, communication with a hearing-impaired or speech-impaired person during the hearing shall, at his/her choice, take place orally, in writing or with the assistance of a communication facilitator to be called in

<sup>87</sup> Germany, representative of the DAV.

<sup>88</sup> See in particular recital 27 of Directive 2010/64/EU.

			<p>by the court. The court shall furnish suitable technical aids for oral and written communication. In addition to this, No. 21 (2) RiStBV<sup>89</sup> advises the prosecution office to inform the court about the hearing-impairment or speech-impairment. Further, pursuant to No. 21 (3) RiStBV, the hearing-impaired or speech-impaired person shall be asked to repeat questions, testimonies and oral debates.</p> <p>Section 191a GVG states that a blind or visually impaired person may demand that the court documents intended for him/her also be made available to him/her in a form accessible to him/her to the extent that this is necessary in order to safeguard his/her rights in the proceedings. There shall be no charge for this.</p> <p>The Regulations concerning the barrier-free accessibility of documents for blind and visually impaired persons in judicial procedures (Verordnung zur barrierefreien Zugänglichkeit von Dokumenten für blinde und sehbehinderte Personen im gerichtlichen Verfahren (Zugänglichkeitsverordnung - ZMV<sup>90</sup>)) determine the forms in which documents can be made available to these persons, e.g. in large print, Braille, electronically, acoustically, orally or telephonically.</p> <p>However, in a current case the Federal Constitutional Court considered sufficient that the accused person has a legal counsel who can explain the relevant facts.<sup>91</sup></p>
	b) suspect or accused persons with intellectual impairment or disability;	x	<p>No 21 (1) RiStBV states that disabled people may expect consideration to be taken of their special requirements.</p> <p>Beyond this, there are no regulations or guidelines.<sup>92</sup> For the examination of witnesses with intellectual impairment, No. 21 (4) RiStBV advises a person of trust to be present during the examination to enable a proper conversation. Such a rule does not exist for the examination of an intellectual impaired accused. It depends on the relevant authorities whether and to what extent they respond to the needs of this person.</p> <p>When asked, the Federal Ministry of Justice stated that there will be legal adaptations concerning communication assistances in court proceedings. In November 2014, the conference of the Ministers of Justice called upon the Federal Government to develop additional rules, especially for the preliminary stage of the proceedings. Proposals have been</p>

<sup>89</sup> Germany, Internal guidelines for criminal proceedings and fine proceedings (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*), 01.01.1997, available at: [www.verwaltungsvorschriften-im-internet.de/bsvwwbund\\_01011977\\_420821R5902002.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwwbund_01011977_420821R5902002.htm).

<sup>90</sup> Germany, Regulations concerning the barrier-free accessibility of documents for blind and visually impaired persons in judicial procedures (*Verordnung zur barrierefreien Zugänglichkeit von Dokumenten für blinde und sehbehinderte Personen im gerichtlichen Verfahren (Zugänglichkeitsverordnung – ZMV)*), 26.02.2007, available at: [www.gesetze-im-internet.de/zmv/](http://www.gesetze-im-internet.de/zmv/) (German).

<sup>91</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 1 BvR 856/13, 10 October 2014.

<sup>92</sup> Germany, representatives of the Federal Ministry of Justice, the Federal Association of “Lebenshilfe”, the DAV and people with intellectual disabilities.

			announced to be made during this year. Conceivable could be the use of plain language or the involvement of a person suitable to support the communication. <sup>93</sup>
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).	x	<p>In Germany, children under the age of 14 years are not criminally liable. For criminal proceedings against youths who have reached the age of fourteen but not yet eighteen years, the Youth Courts Law (Jugendgerichtsgesetz, JGG) states special regulations.</p> <p>According to Section 67 JGG, the parent or guardian and the legal representative have to be involved in the proceedings. Insofar as the accused has a right to be heard, to ask questions and make applications or to be present during acts of investigation, the same rights shall also accrue to the parent or guardian and to the legal representative (subsection 1) Where provision is made for notices to the accused, the corresponding notice should also be addressed to the parent or guardian and to the legal representative (subsection 2). And the legal representative's right to select defence counsel and to file for legal remedies shall also accrue to the parent or guardian (subsection 3).</p> <p>i) Thus, a youth accused to an offence can demand that his/her parent or guardian is informed of all measures concerning the proceedings, and that the parent or guardian may be present at examinations and investigations in order to support him/her.</p> <p>Further, pursuant to Section 68 JGG there are extended possibilities to appoint a defence counsel, compared to proceedings against adults. In addition, the "youth court assistance service" shall be involved at all stages of the proceedings against a youth (Section 38 JGG). The youth court assistance service is provided by youth welfare offices working in conjunction with the youth assistance associations and shall highlight the supervisory, social and care-related aspects in proceedings before the youth courts.</p> <p>For the stage of police hearings, the police service regulations (Polizeidienstvorschrift, PDV) 382,<sup>94</sup> which are of non-binding nature, states further recommendations on how to deal with young people, especially concerning the circumstances of the examinations. E.g., information to rights shall be given in a comprehensible manner, according to age and level of development.</p> <p>ii) As described above, parent or guardian and the legal representative have the right to be informed about the proceedings and to be present at the youth's examination. Further, they can choose a defence counsel. The PDV 382 contains recommendations concerning the contact with the parent or guardian and the legal representative.</p>
<b>3.4</b>	Is there any recording procedure to note that interpretation and		Since the legislative amendment <sup>96</sup> , according to Section 168b (1) StPO the result of investigatory acts of the investigating authorities shall be recorded on the file. Further instructions are implemented in the RiStBV. These

<sup>93</sup> Germany, representative of the Federal Ministry of Justice.

<sup>94</sup> <http://www.dvjj.de/sites/default/files/medien/imce/documente/downloads/PDV-382.pdf> (German).

<p>translation have occurred and in which form?<sup>95</sup> If yes, briefly provide information on how this procedure is organised in practice.</p>			<p>guidelines are general administrative regulations giving binding instructions to the police and the prosecution authorities, but are not binding on the courts. In No. 181 (1) RiStBV instructs the police and prosecution authorities to record whether the accused's language skills are considered sufficient or an interpreter is needed to be called in. In order to do so, competent authorities enter a notice in the file. The courts are, pursuant to Section 168a StPO, obliged to record the names of the persons who participated in the court hearings, and must state whether the essential procedural formalities have been observed. Thus, the presence of an interpreter<sup>97</sup> and the reading of translated documents<sup>98</sup> shall be recorded.</p>
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## SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS <sup>99</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 information 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 commencement of the first examination, pursuant to Section 163a (3) in conjunction with Section 136 StPO an accused person has to be informed of the offence with which he/she is charged and of the applicable criminal law provisions. He/she is to be advised that the law grants him/her the right to respond to the charges, or not to make any statement on the charges, and the right, at any stage, even prior to his examination, to consult with a defence counsel of his choice, who can, under certain conditions, be appointed by court. He/she shall further be advised that he/she may request evidence to be taken in his/her defence. In appropriate cases the accused shall also be informed that he/she may make a written statement, and of the possibility of perpetrator-victim mediation.</p> <p>Further, pursuant to Section 163a (5) StPO in conjunction with Section 187 GVG, the accused has to be informed in a language he/she understands that he/she may demand that an interpreter or a translator be called in for the entire criminal proceedings free of charge.</p>

<sup>96</sup> See footnote 2 above.

<sup>95</sup> See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

<sup>97</sup> Meyer-Goßner, L. (2014), *„Strafprozessordnung“*, München, C.H. Beck, § 168a StPO No. 1, § 273 StPO No. 7.

<sup>98</sup> Meyer-Goßner, L. (2014), *„Strafprozessordnung“*, München, C.H. Beck, § 273 StPO No. 9.

<sup>99</sup> See in particular Article 3 and relevant recitals of Directive 2012/13/EU.

<p>If the accused is arrested, Section 114b (2) StPO states that he/she has to be advised that he/she</p> <ol style="list-style-type: none"> <li>1. shall, without delay, at the latest on the day after his apprehension, be brought before the court that is to examine him/her and decide on his/her further detention;</li> <li>2. has the right to reply to the accusation or to remain silent;</li> <li>3. may request that evidence be taken in his/her defence;</li> <li>4. may at any time, also before his/her examination, consult with defence counsel of his choice;</li> <li>4a. may, in the cases referred to in Section 140 subsections (1) and (2), request the appointment of defence counsel in accordance with Section 141 subsections (1) and (3). <b>When appointed, the defence counsel is temporarily reimbursed by the Treasury. If the defendant is convicted at the conclusion of the proceedings, or if a measure of reform and prevention is ordered, the defendant has to bear the costs of the proceedings, including the defence counsel's fee, insofar as they were caused by the trial for the offence of which the defendant has been convicted (Section 465 StPO);</b></li> <li>5. has the right to demand an examination by a female or male physician of his/her choice;</li> <li>6. may notify a relative or a person trusted by him/her, provided the purpose of the investigation is not endangered thereby.</li> <li>7. may, in accordance with Section 147 subsection (7), apply to be given information and copies from the files, insofar as he has no defence counsel; and</li> <li>8. may, if remand detention is continued after he is brought before the competent judge, <ol style="list-style-type: none"> <li>a) lodge a complaint against the warrant of arrest or apply for a review of detention (Section 117 subsections (1) and (2)) and an oral hearing (Section 118 subsections (1) and (2)),</li> <li>b) in the event of inadmissibility of the complaint, make an application for a court decision pursuant to Section 119 subsection (5), and</li> <li>c) make an application for a court decision pursuant to Section 119a subsection (1) against official decisions and measures in the execution of remand detention.</li> </ol> </li> </ol> <p>Further, the advice must be given that</p> <ul style="list-style-type: none"> <li>- the defence counsel is entitled to inspect the files</li> <li>- the accused has the right to demand that an interpreter or a translator shall be called in for the entire criminal proceedings free of charge.</li> <li>- the accused can demand the notification of the consular representation of his native country and have messages communicated to the same.</li> </ul> <p>In order to give information on all these rights, a letter of rights has been developed which can be handed out to the accused. It is reported that in practice, such letter of rights is actually regularly provided.<sup>100</sup></p> <p>b) The information that has to be given prior to the first examination is not legally prescribed to be given in a special form;<sup>101</sup> usually it is given orally.<sup>102</sup></p> <p>In case of arrestment, pursuant to Section 114b (1) StPO the instructions to the rights must be given in writing in a language the accused</p>
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<sup>100</sup> Germany, representative of the DAV.

<sup>101</sup> Von Häfen in: Graf, J.-P. (2014), *Beck'scher Online-Kommentar zur Strafprozessordnung, Edition 19'*, München, C.H. Beck, § 163a StPO No. 14.

<sup>102</sup> Germany, representative of the DAV.

	<p>understands. In practice, regularly a letter of rights is provided.<sup>103</sup> If written instruction is clearly insufficient or impossible – e.g. because a translation in a language the accused understands is not available<sup>104</sup> – oral instruction shall be given. In this case, written instruction shall be given subsequently insofar as this can reasonably be done.</p>
	<p>c) All information has to be given at the commencement of the first examination or at the time of the arrest.<sup>105</sup></p>
<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) At the commencement of the main hearings, the public prosecutor reads out the charges (Section 243 (3) StPO). Before the defendant is examined by the judge, pursuant to Section 243 (5) StPO he/she is to be informed that he/she may choose to respond to the charges or not to make any statement on the charges. In practice, it is reported that the information is actually given by the judges.<sup>106</sup></p>
	<p>b) The information is given orally.<sup>107</sup></p>
	<p>c) The information has to be given at the commencement of the examination.<sup>108</sup></p>
<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) In case that the accused is arrested, he/she shall be examined by court the day after his/her detention (Section 115 StPO). Hereby he/she is to be informed of the incriminating circumstances and of his/her right to reply to the accusation or to remain silent. If remand detention is continued, the accused shall be informed of the right of complaint as well as of other appellate remedies. It is reported that in practice the information is regularly given by the judges.<sup>109</sup></p> <p>Further, an examination of the accused by the judge can be conducted during the preliminary proceedings (Section 133 StPO). If so, pursuant to Section 136 (1) StPO he/she shall have to be informed of the offence with which he/she is charged with and of the applicable criminal law provisions. He/she is to be advised that the law grants him/her the right to respond to the charges, or not to make any statement on the charges, and the right, at any stage, even prior to his examination, to consult with defence counsel of his choice, who can,</p>

<sup>103</sup> Germany, representative of the DAV.

<sup>104</sup> Meyer-Goßner, L. (2014), ‚Strafprozessordnung‘, München, C.H. Beck, § 114b No.1.

<sup>105</sup> Meyer-Goßner, L. (2014), ‚Strafprozessordnung‘, München, C.H. Beck, § 114b No.1.

<sup>106</sup> Germany, representative of the DAV.

<sup>107</sup> Gorf, C. in: Graf, J.-P. (2014), ‚Beck’scher Online-Kommentar zur Strafprozessordnung, Edition 19‘, München, C.H. Beck, § 243 StPO No. 26.

<sup>108</sup> Gorf, C. in: Graf, J.-P. (2014), ‚Beck’scher Online-Kommentar zur Strafprozessordnung, Edition 19‘, München, C.H. Beck, § 243 StPO No. 26.

<sup>109</sup> Germany, representative of the DAV.

		<p>under certain conditions, be appointed by court. He/she shall further be advised that he/she may request evidence to be taken in his/her defence. In appropriate cases the accused shall also be informed that he/she may make a written statement, and of the possibility of perpetrator-victim mediation. In practice, examinations by judge are rarely conducted; no problems have been reported in this context.<sup>110</sup></p>
		<p>b) The information is given orally.<sup>111</sup></p>
		<p>c) The information has to be given at the commencement of the examination.<sup>112</sup></p>
<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) Pursuant to Section 43 Bundesrechtsanwaltsordnung (Federal Lawyers' Act, BRAO<sup>113</sup>), a lawyer must practise his/her profession conscientiously. Section 11 (1) Berufsordnung der Rechtsanwälte (Rules of Professional Practice of lawyers), BORA<sup>114</sup>) states that a lawyer shall inform his client promptly about any events and measures taken, which are relevant to the progress of the matter. In particular, the client shall be informed about any important documents received or sent. Further, client inquiries shall be answered promptly.  According to that, the defence counsel shall give comprehensive advice on all aspects that may be relevant for the criminal proceedings. In practice, the extent of information provided depends on the defence counsels.<sup>115</sup></p> <p>b) There is no strict regulation; all information can be given orally or in writing. In practice, the accused is regularly informed during a personal meeting with the defence counsel, but, however, some defence counsels use written information, too, e.g. on their websites.<sup>116</sup> It depends on the lawyer's commitment in what range such information is provided.</p>

<sup>110</sup> Germany, representative of the DAV.

<sup>111</sup> Krauß, D. in: Graf, J.-P. (2014), *Beck'scher Online-Kommentar zur Strafprozessordnung*, Edition 19', München, C.H. Beck, § 115 StPO No. 6.

<sup>112</sup> Krauß, D. in: Graf, J.-P. (2014), *Beck'scher Online-Kommentar zur Strafprozessordnung*, Edition 19', München, C.H. Beck, § 115 StPO No. 6; Monka, C. in: Graf, J.-P. (2014), *Beck'scher Online-Kommentar zur Strafprozessordnung*, Edition 19', München, C.H. Beck, § 136 StPO No. 8.

<sup>113</sup> Germany, Federal Lawyers' Act (*Bundesrechtsanwaltsordnung, BRAO*), 01.08.1959, available at [www.gesetze-im-internet.de/brao/](http://www.gesetze-im-internet.de/brao/) (German), English version (status as of 2011): [www.brak.de/w/files/02\\_fuer\\_anwaelte/berufsrecht/brao-stand-6-12-2011-mit-korr-191f-2014.pdf](http://www.brak.de/w/files/02_fuer_anwaelte/berufsrecht/brao-stand-6-12-2011-mit-korr-191f-2014.pdf).

<sup>114</sup> [www.brak.de/w/files/02\\_fuer\\_anwaelte/berufsrecht/bora-stand-01-01-15.pdf](http://www.brak.de/w/files/02_fuer_anwaelte/berufsrecht/bora-stand-01-01-15.pdf) (German), English version (status as of 2013): [www.brak.de/w/files/02\\_fuer\\_anwaelte/berufsrecht/bora-engl-stand-1-11-2013.pdf](http://www.brak.de/w/files/02_fuer_anwaelte/berufsrecht/bora-engl-stand-1-11-2013.pdf).

<sup>115</sup> Germany, representative of the DAV.

<sup>116</sup> E.g.: [www.anwalt-strafsache.de/beteiligte-im-strafverfahren/beteiligte-im-strafverfahren.php/](http://www.anwalt-strafsache.de/beteiligte-im-strafverfahren/beteiligte-im-strafverfahren.php/) / <http://dost-rechtsanwalt.de/spezialisiert-auf-die-strafverteidigung-anwlt-berlin/rechte-des-angeklagten-im-gerichtsverfahren-des-strafrechts/> / [www.strafverteidiger-berlin.info/strafverfahren/page/2/](http://www.strafverteidiger-berlin.info/strafverfahren/page/2/)

		c) There is no strict regulation. The defence counsel shall give without delay the information which is necessary according to the stage of proceedings and the specific circumstances of the case (see “a” above).
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.	Pursuant to Section 114b (2) No. 3 StPO, in case of arrest the information is provided that the accused may request that evidence be taken in his/her defence. Further, pursuant to Section 114b (2) No. 4a StPO he/she must be informed that in the cases referred to in Section 140 subsections (1) and (2) the accused may request the appointment of defence counsel. That is the case, if e.g. he/she is charged with a felony, or a defence counsel seems to be necessary because of the seriousness of the offence, or because of the difficult factual or legal situation, or because it is evident that the accused cannot defend him/herself. ). When appointed, the defence counsel is temporarily reimbursed by the Treasury. Thus, this corresponds to a free legal advice as named in Article 3 of the Directive, but is not exactly the same.
2.	<b>LETTER OF RIGHTS<sup>117</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>There are several versions of the letter of rights available on the website of the Federal Ministry of Justice<sup>118</sup>, differentiating between the grounds for an arrest. For persons who are provisionally arrested, persons arrested on the basis of an arrest warrant and for persons arrested on the basis of a committal order or precautionary arrest warrant, the letter of rights provides the information that</p> <ul style="list-style-type: none"> <li>- the accused has the right to know what criminal offence he/she is suspected of and why he/she has been arrested,</li> <li>- the accused must be brought before a judge without delay, at the latest on the day after the arrest. The judge has to question the accused and decide whether the detention can continue, unless he/she is released earlier,</li> <li>- the accused can make a statement about the charges against him/her or decide not to make any statements about the case,</li> <li>- the accused can apply for individual items of evidence to be taken in his/her defence,</li> <li>- the accused can consult a defence lawyer of his/her choice at any time, even before any questioning has taken place. If the accused needs help in contacting a defence lawyer, he/she can ask for assistance,</li> <li>- if the accused does not yet have a defence lawyer and the case is one where a defence lawyer is mandatory (in particular where the accusations are particularly serious, or where the accused is being held on remand), a lawyer will be appointed for him/her by the court. In some cases, this will be done during the investigation stage. The accused can tell the court who he/she would like as his/her defence lawyer,</li> <li>- the accused can request to be examined by a male or a female doctor of his/his choice,</li> <li>- the accused can notify a relative or another person he/she trusts that he/she has been arrested, provided that this does not conflict with the purpose of the investigation,</li> <li>- the accused's defence lawyer can apply to inspect the investigation files. If the accused does not have a defence lawyer, he/she can still receive information and copies from the files. He/she can do this if it is necessary for a proper defence, if it does not endanger the investigation (including in other criminal proceedings), and if it does not conflict with the overriding, legitimate interests of third persons,</li> <li>- if the court issues an arrest warrant or committal order after the accused has been brought before the judge, he/she can appeal or apply for a review of the arrest warrant/committal order and an oral hearing. He/she can</li> </ul>

<sup>117</sup> See in particular Article 4 and relevant recitals of Directive 2012/13/EU.

<sup>118</sup> [http://www.bmjv.de/DE/Service/StatistikenFachinformationenPublikationen/Fachinformationen/Belehrungsformulare/\\_node.html](http://www.bmjv.de/DE/Service/StatistikenFachinformationenPublikationen/Fachinformationen/Belehrungsformulare/_node.html)

		<p>apply for a court order against restrictions imposed on him/her for his/her detention or committal, as well as against decisions or measures in enforcement of remand detention or committal. However, the accused cannot do this if a court order has already been issued and he/she is free to appeal.</p> <p>- If the accused has foreign nationality, he/she can also ask for the responsible consulate of his/her home country to be notified. He/she can provide information to the consulate.</p> <p>If the accused does not speak German well enough, or if he/she has problems with hearing or speaking, he/she can request help from somebody to interpret or translate for him/her during the proceedings. As a rule, if the accused does not have a defence lawyer he/she must be provided with written translations of detention orders as well as indictments, penal orders and non-final judgments. These services will be provided free of charge.</p> <p>For persons suspected of an offence who are detained in order to establish their identity, the provided information is basically the same, except for slight differences concerning the procedure of judicial decision.</p> <p>Further, there is a letter of rights providing different information for persons not suspected of any offence who are detained in order to establish their identity.</p> <p>There is no special letter of rights for arrested or detained children. In case that minors are accused of an offence, information has to be given in a manner that meets the minor's age and level of development. Further, the parents or guardians must be involved in the proceedings, see above Section A 3.3. c).</p>
2.2	<p>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></p>	<p>Pursuant to Section 114b StPO, the letter of rights must be provided when the accused is arrested by officials in the police force. In practice, it is reported that a letter of rights is regularly provided; however, a different handling in various regions cannot be ruled out.<sup>119</sup></p>
2.3	<p>Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language is simple and accessible enough for the</p>	<p>In the letter of rights, the accused person is being "personally" addressed ("You have the following rights: ..."), which can make the writing easier to understand. Nevertheless, the letter is drafted in technical language, closely based on the wording of the law. The consulted professional associations stated that for the average accused it is difficult to understand the text. Further, a more detailed explanation is often deemed necessary to really comprehend the meaning, concerning the complex subject.<sup>120</sup></p>

<sup>119</sup> Germany, representative of the DAV.

<sup>120</sup> Germany, representatives of the DAV and the Regional Courts (*Landgerichte*) Berlin, Hamburg and Köln.

	<p>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></p>	
<b>3.</b>	<b>RIGHT TO INFORMATION ABOUT THE ACCUSATION<sup>121</sup></b>	<b>Brief Description</b>
<b>3.1</b>	<p>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 or in writing)</p>	<p>During the preliminary proceedings, the accused shall be informed of the offence with which he/she is charged (Section 136, Section 163a StPO). The information is given orally. As the investigations are usually carried out by police officers who are no legal experts, it is only necessary to give an approximate estimation<sup>122</sup>.</p> <p>If the accused is arrested, pursuant to Section 115 StPO he/she shall be brought before the competent court and be examined. In this case, the examining judge has to inform him/her of the offence with which he/she is charged and point out the incriminating circumstances. In case of arrest on the basis of an arrest warrant, according to Section 114 (2) StPO the written warrant of arrest indicates the offence of which the accused is strongly suspected, the time and place of its commission, the statutory elements of the criminal offence and the penal provisions to be applied, further the facts disclosing the strong suspicion of the offence.</p> <p>The detailed description of the criminal offence is provided in the bill of indictment (Section 200 StPO), in writing.</p>
<b>3.2</b>	<p>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>	<p>The oral information has to be given at the commencement of the first examination by the investigating authorities (Section 163a StPO).</p> <p>In case of arrest, the written arrest warrant is to be handed over to the accused at the time of the arrest. If the accused is provisionally arrested without an arrest warrant, he/she has to be brought before the Local Court at the latest on the next day. At the commencement of the examination by the competent judge, the accused is to be informed of the offence with which he/she is charged and point out the incriminating circumstances (Section 128 in conjunction with Section 115 (3) StPO).</p> <p>After the conclusion of the investigations, the bill of indictment is composed by the public prosecution office and then submitted to the competent court. The court communicates it to the indicted accused and enables him/her to make a comment (Section 201 StPO).</p> <p>In practice, the information is provided as described; no significant problems have been reported.<sup>123</sup></p>

<sup>121</sup> See in particular Article 6 and relevant recitals of Directive 2012/13/EU.

<sup>122</sup> Meyer-Goßner, L. (2014), „Strafprozessordnung“, München, C.H. Beck, § 163a No.4.

3.3	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation change?	<p>During the preliminary proceedings, it is not legally prescribed to inform the accused person about changes of the details of the accusation. After the accused's examination, police and public prosecution office undertake all investigations. The accused is regularly informed only, at the conclusion of investigations, whether public charges are preferred or the proceedings are terminated.<sup>124</sup></p> <p>If the accused is in remand detention, a different situation applies. All changings of the accusations must be supplied in order to make verifiable whether the arrest warrant has to be revoked. It is reported that in practice often a review of detention is conducted in such cases in order to allow a defence against the new accusations.<sup>125</sup></p> <p>After the public prosecution office has preferred charges, the subject of adjudication is the offence specified in the charges in the bill of indictment (Section 264 (1) StPO). According to Section 265 (1) StPO, the defendant may not be sentenced on the basis of a penal norm other than the one referred to in the charges admitted by the court without first having his attention specifically drawn to the change in the legal reference and without having been afforded an opportunity to defend himself. The inclusion of new charges in the proceedings is only possible if the defendant consents thereto (Section 266 (1) StPO).</p>
4.	<b>RIGHT OF ACCESS TO CASE MATERIALS<sup>126</sup></b>	<b>Brief Description</b>
4.1	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	<p>Section 147 (1) StPO states that the defence counsel has authority to inspect those files which are available to the court or which will have to be submitted to the court if charges are preferred, as well as to inspect officially impounded pieces of evidence. According to Section 147 (7) StPO, if an accused has no defence counsel, information and copies from the files shall be given to him/her upon his application, provided that this is necessary for an adequate defence.</p>
4.2	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>The defence counsel may inspect the files at any time during the proceedings. However, prior to conclusion of the investigations the inspection can be subject to tighter restrictions, see below 4.3.</p> <p>In practice, access to case materials is regularly granted during the preliminary proceedings. However, it is reported that differences exist between the several juridical districts; in some areas, the lawyers have to wait longer or remind the court to send the files.<sup>127</sup></p> <p>In case that the accused is in remand detention, the access to the files is provided faster in order to meet the accused's right to lodge complaint against the warrant of arrest or apply for a review of detention.<sup>128</sup></p>

<sup>123</sup> Germany, representative of the DAV.

<sup>124</sup> Germany, representative of the DAV.

<sup>125</sup> Germany, representative of the DAV.

<sup>126</sup> See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

<sup>127</sup> Germany, representative of the DAV.

<sup>128</sup> Germany, representative of the DAV.

4.3	Under what circumstances is access to material refused? Who takes the decision of refusal?	<p>If investigations have not yet been designated as concluded on the file, defence counsel may be refused inspection of the files or of individual parts of the files, as well as inspection of officially impounded pieces of evidence, insofar as this may endanger the purpose of the investigation (Section 147 (2) StPO). This can also be the case if the investigations of other proceedings can be endangered.<sup>129</sup> If the accused is in remand detention or if, in the case of provisional arrest, this has been requested, information of relevance for the assessment of the lawfulness of such deprivation of liberty shall be made available to defence counsel in suitable form, as a rule he/she shall be permitted to inspect the files.</p> <p>After the conclusion of the investigation, the inspection of the files has to be granted. However, the court can take special measures if specific documents are subject to secrecy obligations, e.g. because the information is classified and kept strictly confidential<sup>130</sup>. Based on a case-by-case decision, access can be refused or the defence counsel can be obligated to maintain confidentiality.</p> <p>Pursuant to Section 147 (4) StPO, the public prosecution office decides whether to grant inspection of the files in preparatory proceedings and after final conclusion of the proceedings; in other cases the presiding judge of the court seized is competent to decide.</p> <p>According to Section 147 (3) StPO, at no stage of the proceedings may defence counsel be refused inspection of records concerning the examination of the accused or concerning such judicial acts of investigation to which defence counsel was or should have been admitted, nor may he be refused inspection of expert opinions.</p>
5.	<b>CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING &amp; SPECIAL MEASURES<sup>131</sup></b>	<b>Brief Description</b>
5.1	In which languages can information be provided for the following?	
	a) information on procedural rights	<p>Information on procedural rights shall be given by providing a letter of rights. For the available languages, see 5.1.b).</p> <p>Any other necessary information is given orally. If the accused does not have a command of the German language, an interpreter is to be called in to interpret into a language the accused understands.</p>

<sup>129</sup> Meyer-Goßner, L. (2014), ‚Strafprozessordnung‘, München, C.H. Beck, § 147 No.25.

<sup>130</sup> E.g. pursuant to Section 96 StPO or pursuant to the General guidelines of the Federal Ministry of the Interior concerning the physical and organisational protection of classified information (Allgemeine Verwaltungsvorschrift des Bundesministeriums des Innern zum materiellen und organisatorischen Schutz von Verschlusssachen (VS-Anweisung - VSA) available at: [www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/Sicherheit/SicherheitAllgemein/VSA.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/Sicherheit/SicherheitAllgemein/VSA.pdf?__blob=publicationFile)

<sup>131</sup> See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU.

b) letter of rights	<p>The letter of rights is available on the website of the Federal Ministry of Justice<sup>132</sup> in the following languages:</p> <p>Albanian, Arabic, Armenian, Azerbaijani, Bulgarian, Chinese, Danish, Dari, German, English, Estonian, Farsi, Finnish, French, Georgian, Greek, Hindi, Irish, Icelandic, Italian, Japanese, Croatian, Kurmanji, Latvian, Lithuanian, Maltese, Mandarin, Macedonian, Dutch, Norwegian, Pashtu, Polish, Portuguese, Romanian, Russian, Swedish, Serbian (Cyrillic and Latin script), Slovak, Slovenian, Spanish, Kurdish (Sorani), Thai, Czech, Turkish, Ukrainian, Hungarian, Urdu, Vietnamese.</p> <p>If the accused does only understand a language not covered in this list, or it is not possible to give instruction in writing for another reason, pursuant to Section 114b (1) StPO, an oral instruction shall be given. A written instruction shall, however, be given subsequently insofar as this can reasonably be done.</p>		
c) information about the accusation	<p>The letter of rights contains a reference to the accused's right on information about the accusation. If the accused does not have a command of the German language, an interpreter shall be called in in order to inform the accused about the accusation. In the letter of rights, the accused is informed that he/she can demand that an interpreter is called in, too.</p> <p>Written information about the accusation shall be translated into a language the accused understands. For the scope of right to translations, see above Section A, 2.1.</p>		
d) case materials	<p>The letter of rights contains the information that the accused's defence lawyer can apply to inspect the investigation files and, if the accused does not have a defence lawyer, he/she can still receive information and copies from the files.</p> <p>Further, it can be considered necessary to translate parts of the case materials into a language the accused understands. For the scope of right to translations, see above Section A, 2.1.</p>		
	<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
<b>5.2</b> 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? <b>If yes, briefly describe the procedure where relevant.</b>			

<sup>132</sup> [http://www.bmjb.de/DE/Service/StatistikenFachinformationenPublikationen/Fachinformationen/Belehrungsformulare/\\_node.html](http://www.bmjb.de/DE/Service/StatistikenFachinformationenPublikationen/Fachinformationen/Belehrungsformulare/_node.html)

	a) information on procedural rights		x	There is no special procedure. If information has been refused, the accused can raise objection against the use of statements he/she made at any hearing without having been informed of his/her rights. The consequence can be that those statements may not be used as evidence.. <sup>133</sup>
	b) letter of rights		x	Same applies as described under 5.2 a).
	c) information about the accusation		x	Same applies as described under 5.2 a).
	d) access to case materials	x		If the public prosecution office refuses inspection of the files, a decision by the competent court may be applied for. However, this application is only admissible when the termination of the investigations has been noted in the file, or in case that the accused is arrested or detained. Otherwise, a disciplinary complaint (Dienstaufsichtsbeschwerde) can be lodged against the person in charge of the prosecution office. The complaint is to be addressed to the superior public prosecution office. The decision cannot be appealed by a court, unless constitutional law is infringed. If the access to case material is refused by court, a complaint to the next higher court is admissible (Section 304 StPO).
<b>5.3</b>	Is any official record kept to note the provision of information about the following? <b>If yes, briefly describe where relevant.</b>			
	a) information on procedural rights		x	Section 168b (1) StPO has been changed in 2013. Now it states that the result of investigatory acts of the investigating authorities shall be recorded on the file. There are no regulations apart from the investigating authorities' obligation to record investigatory acts. In practice, accused persons are often requested to sign for the purpose of evidencing the conduction of these acts. However, they can refuse to sign.  In practice, this had been done so before. <sup>134</sup> Pursuant to Section 168b (3), the information of the accused prior to his examination pursuant to Section 136 subsection (1) and Section 163a shall be documented. Sections 136 and 163a StPO state the need to inform the accused on his/her procedural rights (see above 1.1.a)).
	b) letter of rights		x	See 5.3 a). . There are no regulations apart from the investigating authorities' obligation to record investigatory acts. In practice, accused persons are often requested to sign for the purpose of evidencing the conduction of these acts. This includes the provision of the letter of rights. However, they can refuse to sign.
	c) information about the accusation		x	There are no regulations apart from the investigating authorities' obligation to record investigatory acts. In practice, accused persons are often requested to sign for the purpose of evidencing the conduction of these acts. However, they can refuse to

<sup>133</sup> Monka, C. in: Graf, J.-P. (2014), „Beck'scher Online-Kommentar zur Strafprozessordnung, Edition 19“, München, C.H. Beck, § 136 StPO No. 21.

<sup>134</sup> Germany, representative of the DAV.

				sign. Pursuant to Section 168b (3), the information of the accused prior to his examination pursuant to Section 136 subsection (1) and Section 163a shall be documented. Sections 136 and 163a StPO state the need to inform the accused on his/her procedural rights, which includes the information about accusation (see above 1.1.a)).
	d) access to case materials	x		According to Section 168b (1) StPO, the result of investigatory acts of the investigating authorities shall be recorded, see 5.3 a). This includes requests for and the provision or refusal of access to case materials. There are no regulations apart from the investigating authorities' obligation to record investigatory acts. In practice, accused persons are often requested to sign for the purpose of evidencing the conduction of these acts. However, they can refuse to sign.
5.4	<p>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:</p> <p>a) suspect or accused persons with physical impairment or disability;</p> <p>b) suspect or accused persons intellectual impairment or disability;</p> <p>c) suspect or accused children who are suspects/defendants and/or the holder of parental responsibility.</p> <p><b>If yes, briefly provide</b></p>			

	<b>information on those mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?</b>			
• information on procedural rights	a)	x		Accused persons with physical impairment or disability can demand that an interpreter is called in or information is made accessible in other suitable ways, see above Section A 3.3 a).
	b)		x	There are no special regulations or procedures concerning accused persons with intellectual impairment or disability, see above Section A 3.3 b).
	c)	x		In case that minors are accused of an offence, information has to be given in a manner that meets the minor's age and level of development. Further, the parents or guardians must be involved in the proceedings, see above Section A 3.3. c).
• letter of rights	a)		x	
	b)		x	
	c)		x	<sup>135</sup>
• information about the accusation	a)	x		The same applies as described under 5.4 a) "information on procedural rights".
	b)		x	The same applies as described under 5.4 a) "information on procedural rights".
	c)	x		The same applies as described under 5.4 a) "information on procedural rights".

<sup>135</sup> Germany, representative of the Federal Ministry of Justice.

• access to case materials	a)	x		Accused persons with physical impairment or disability may demand that case material is made accessible in a suitable way, see above Section A 3.3 a). However, if the accused has a defence counsel there will mostly be no provision of translations of case material. <sup>136</sup>
	b)		x	The same applies as described under 5.4 a) “information on procedural rights”.
	c)		x	

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<sup>136</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), 1 BvR 856/13, 10 October 2014.