

*Submission Template*

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

**May 2015**

Country: Luxembourg

FRANET contractor: Brainiact S.à r.l.

Author(s) name: Ana Rita Ramires Campino

Reviewed by: Marc Muller

DISCLAIMER: This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project 'The right to interpretation and translation and the right to information in criminal proceedings in the EU'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

## Contents

Section A: The right to interpretation and translation in criminal proceedings	6
1. Right to interpretation	6
2. Right to translation of documents	12
3. Rights concerning both interpretation and translation	16
Section B: Right to information in criminal proceedings	21
1. Provision of information on the procedural rights	21
2. Letter of Rights	23
3. Right to information about the accusation	25
4. Right of Access to Case Materials	26
5. Cross-cutting issues: Languages, complaint mechanisms, recording & special measures	27

## 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).

The Grand Duchy of Luxembourg has not yet transposed the Directives 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (interpretation and translation Directive)<sup>1</sup> and 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right of suspect or accused persons to information in criminal proceedings (information in criminal proceedings Directive)<sup>2</sup>. According to Luxembourg's Report on the transposition of European Union Directives and on the application of European Union law<sup>3</sup>, an infringement procedure has been launched by the European Commission for the late transposition of the interpretation and translation Directive 2010/64/EU.

A Bill has recently been introduced into Parliament, which foresees the transposition of these two Directives, together with the Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty<sup>4</sup>. The Bill 6758 strengthening the procedural guarantees in criminal matters<sup>5</sup> proposes amendments in some legal texts, mainly in the Criminal Procedure Code (*Code*

---

<sup>1</sup> Directive 2010/64/EU of the European Parliament and the Council of the European Union of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ 2010 L 280/1, available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32010L0064>. All hyperlinks were accessed on 14 May 2015.

<sup>2</sup> Directive 2012/13/EU of the European Parliament and the Council of the European Union, of 22 May 2012 on the right to information in criminal proceedings, OJ 2012 L 142/1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416328034526&uri=CELEX:32012L0013>.

<sup>3</sup> Luxembourg, Ministry of Foreign and European Affairs (*Ministère des Affaires étrangères et européennes*) (2014), Report on the implementation of the guidelines and application of the European Union law (*Rapport sur la transposition des directives européennes et l'application du droit de l'union*), 16 May 2014, p. 9, available at: [www.mae.lu/content/download/42328/344601/version/1/file/Rapport+sur+la+transposition+2014.pdf](http://www.mae.lu/content/download/42328/344601/version/1/file/Rapport+sur+la+transposition+2014.pdf).

<sup>4</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ 2013 L 294/1, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1431761266094&uri=CELEX:32013L0048>.

<sup>5</sup> Luxembourg, Chamber of Deputies (*Chambre des députés*), Bill 6758 strengthening the procedural guarantees in criminal matters (*Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 23.12.2014, available at: [www.chd.lu/wps/PA\\_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/188/367/138676.pdf](http://www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/188/367/138676.pdf).

*d'Instruction Criminelle*, CIC)<sup>6</sup>. If the Bill is adopted, the right to interpretation and translation will then be provided for in the general part of the CIC, namely in Articles 3-2 to 3-5.

The late transposition of these Directives was explained by the Minister of Justice in response to a parliamentary question<sup>7,8</sup> with the difficulties related to the fact that Luxembourg has three official languages in judicial matters<sup>9</sup>. In the same response the Minister also stated that Luxembourg's legislation largely complies with the texts of the Directives. In addition, a circular note of the General Prosecutor<sup>10</sup> emphasises that despite the fact that no sentenced person ever sustained not to have understood the reasons for their sentence based on language reasons, Directive 2010/64/EU shall still be applicable to the extent possible.

Provisions nowadays in place to give procedural guarantees on these matters are only a few: the Act of 7 July 1971 designating sworn experts, translators and interpreters for administrative and law enforcement matters and completing the legal provisions on sworn experts, translators and interpreters<sup>11</sup> (Law designating sworn experts, translators and interpreters) provides for a general principle of assistance by an interpreter or translator when needed<sup>12</sup> and some provisions of the current CIC are applicable (in particular, Articles 38 and 39, 70, 86-1, 190-1 and 190-2).

---

<sup>6</sup> Luxembourg, Code of Criminal Procedure (*Code d'Instruction Criminelle*), coordinated text of 15.04.2015, available at:

[http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_instruction\\_criminelle/](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/)

<sup>7</sup> Luxembourg, Minister of Justice (*Ministre de la Justice*), Parliamentary question No 462, reply of 04.09.2014, available at:

[www.chd.lu/wps/PA\\_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/150/324/134293.pdf](http://www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/150/324/134293.pdf)

<sup>8</sup> Luxembourg, Europaforum.lu (2014), 'Justice, liberté, sécurité et immigration: En réponse à une question parlementaire, le ministre de la Justice Félix Braz déclare que le projet de loi transposant la directive sur le droit à l'information dans le cadre des procédures pénales sera rapidement soumis au Conseil de Gouvernement', 05 September 2014, available at: [www.europaforum.public.lu/fr/actualites/2014/09/qp-droits-supects-hahn-braz/index.html](http://www.europaforum.public.lu/fr/actualites/2014/09/qp-droits-supects-hahn-braz/index.html).

<sup>9</sup> Luxembourg, Act of 24 February 1984 regulating the use of languages (*Loi du 24 février 1984 sur le régime des langues*), 27 February 1984, available at:

[www.legilux.public.lu/leg/a/archives/1984/0016/1984A01961.html?highlight=](http://www.legilux.public.lu/leg/a/archives/1984/0016/1984A01961.html?highlight=).

<sup>10</sup> Luxembourg, General Prosecutor (*Procureur Général d'Etat*) (2015), circular note concerning the implementation of the obligations arising from Directive 2010/64/EU on the right to interpretation and translation in criminal procedures while waiting for its transposition (*Note concernant l'exécution des obligations découlant de la directive 2010/64/UE relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales dans l'attente de la transposition de celle-ci*), 05 February 2015 (unpublished).

<sup>11</sup> Luxembourg, Act of 7 July 1971 designating, for administrative and law enforcement matters, sworn experts, translators and interpreters and completing the legal provisions on sworn experts, translators and interpreters (*Loi du 7 juillet 1971 portant, en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés et complétant les dispositions légales relatives à l'assermentation des experts, traducteurs et interprètes*), 19.07.1971, available at:

[www.legilux.public.lu/leg/a/archives/1971/0046/a046.pdf#page=7](http://www.legilux.public.lu/leg/a/archives/1971/0046/a046.pdf#page=7).

<sup>12</sup> Luxembourg, Chamber of Deputies (*Chambre des députés*), Bill 6758 strengthening the procedural guarantees in criminal matters (*Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 23.12.2014, p. 26, available at:

[www.chd.lu/wps/PA\\_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/188/367/138676.pdf](http://www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/188/367/138676.pdf).

The Bill strengthening the procedural guarantees in criminal matters also emphasises in the explanatory statement the difficulties related to the fact that Luxembourg has three official languages (p. 26) and, despite the non-transposition of the mentioned Directives, it informs that the Grand Duchy has always sought to ensure (*a toujours veillé à*) that assistance by an interpreter and/or lawyer (*avocat*) with language skills in a language that the person understands and speaks is always provided in case needed. One should also note that in the beginning of 2014 the Court of Appeal has concluded in case 37/14 Ch.c.C.<sup>13</sup> that private individuals can directly rely on Article 3, paragraphs 1 and 2, of the interpretation and translation Directive, since these paragraphs are sufficiently precise and unconditional. In this case, A. brought an action for annulment of a detention warrant, as it had not been translated into a language A. understood. The action was found inadmissible because the legal basis had not been precisely indicated. A. appealed of this decision. The Court of Appel considered that an action for annulment does not need to precisely indentify the legal basis and therefore found the case admissible. In its reasoning, the Court emphasised that the purpose of the interpretation and translation Directive was to ensure the right to a fair procedure and the possibility to fully exercise the right of defense to persons that do not understand the language of the procedure. The Court of Appeal also mentioned that according to case law of the Court of Justice of the European Union whenever the provisions of a Directive are sufficiently precise and unconditional, private individuals can directly rely on them. The Court of Appeal concluded, however, that in this case the detention warrant should not be annulled because A. had been informed by the investigating judge that he would be detained and he was assisted by a legal counsel and an interpreter. He had also received a document informing on the possibilities to appeal from the detention warrant – document that had also been translated into a language he understood. The Court of Appeal decided, therefore, that the detention warrant should not be annulled. Following this decision, the General Prosecutor issued the abovementioned circular note<sup>14</sup>, which lays down instructions in view of the Directive's immediate direct effect.

Luxembourg's contribution to this report focuses, therefore, in the text of the proposal for the transposition of the Directives (the Bill strengthening the procedural guarantees in criminal matters) because detailed answers to the questions of the report can be found mainly there (contrary to the general and very few legal provisions currently existing).

---

<sup>13</sup> Luxembourg, council chamber of the Court of Appeal of the Grand Duchy of Luxembourg (*chambre du conseil de la Cour d'appel du Grand-Duché de Luxembourg*) (2014), Case 37/14 Ch.c.C., 20 January 2014.

<sup>14</sup> Luxembourg, General Prosecutor (*Procureur Général d'Etat*) (2015), circular note concerning the implementation of the obligations arising from Directive 2010/64/EU on the right to interpretation and translation in criminal procedures while waiting for its transposition (*Note concernant l'exécution des obligations découlant de la directive 2010/64/UE relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales dans l'attente de la transposition de celle-ci*), 05 February 2015 (unpublished).

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

1.	RIGHT TO INTERPRETATION <sup>15</sup>	TO	Brief Description
1.1	<p><b>Please provide answers to the following for each stage of proceedings as indicated below:</b></p> <p>a) Who has the responsibility for determining the need of interpretation at each stage of the proceedings?</p> <p>b) How it works in practice for the various stages of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</p> <p>c) Who bears the cost of interpretation at each stage?</p> <p>d) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</p> <p><b>.Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>		
1.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) The Bill strengthening procedural guarantees in criminal matters (the Bill) foresees Article 3-2 to be inserted in the CIC, whose paragraph (6) (first part) contains a general provision on the authority responsible for determining the need of interpretation at each stage of the proceedings: “the authority questioning the person or the authority before which the person appears”. If the authority does not appoint any interpreter, the person or their lawyer shall request the appointment of an interpreter<sup>16</sup>.</p>	<p>b) The authority before which the person appears shall ascertain whether the person speaks and understands the language of the procedure while questioning (<i>en l’interrogeant</i>)<sup>17</sup>. If the Bill is approved, Article 3-2 will be inserted in the CIC. Three paragraphs of this Article apply. Paragraph</p>

<sup>15</sup> See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

<sup>16</sup> Luxembourg, General Prosecutor (*Procureur Général d’Etat*) (2015), circular note concerning the implementation of the obligations arising from Directive 2010/64/EU on the right to interpretation and translation in criminal procedures while waiting for its transposition (*Note concernant l’exécution des obligations découlant de la directive 2010/64/UE relative au droit à l’interprétation et à la traduction dans le cadre des procédures pénales dans l’attente de la transposition de celle-ci*), 05 February 2015 (unpublished), p. 8.

<sup>17</sup> Luxembourg, prosecutor.

		<p>(1), which lays down the right to free interpretation to persons that do not speak or understand the language of the criminal procedure, paragraph (2) extending this right to persons with hearing or speech impediments and paragraph (3). This last paragraph contains a general provision applicable to all stages of the criminal procedure, according to which if there are any doubts about the person's ability to speak or understand the language of the procedure the competent authority for the questioning or the authority before which the person appears (<i>l'autorité qui procède à son interrogatoire ou devant laquelle elle comparait</i>) shall ascertain whether the person speaks and understands it. If it is concluded (<i>s'il apparaît</i>) that the person does not speak or understand the language of procedure, interpretation shall be provided without delay.</p> <p>c) Currently, the law designating sworn experts, translators and interpreters governs this matter in Article 5, by categorising costs with experts, translators and interpreters as "court costs" (<i>frais de justice</i>). The new Bill strengthening criminal procedural guarantee will, if adopted, change this rule through the introduction of an exception for costs with interpretation and translation foreseen in the new Articles 3-2 to 3-5 of the CIC. Article 5 of the Law designating sworn experts, translators and interpreters will then provide for these costs to be borne by the State.</p> <p>The Bill also proposes the introduction of an exception in Article 194 of the CIC. According to the current version of this Article, court costs are borne by the convicted person, civilly liable parties or the civil party (<i>le prévenu, les personnes civilement responsables du délit, partie civile</i>). The exception introduced will ensure that costs with interpretation and translation will be borne by the State.</p> <p>The Bill also proposes an amendment to Article 496-5 of the Criminal Code in such a way as to include a penalty clause for possible cases of abuse of the system ("<i>Est puni des peines prévues à l'article 496, celui qui, en faisant sciemment croire, contrairement à la vérité, qu'il ne parle ou ne comprend pas la langue de procédure, provoque la décision de se faire accorder l'assistance gratuite d'un interprète ou d'un traducteur dans le cadre des articles 3-2 à 3-5 du Code d'instruction criminelle. Le condamné est tenu des frais d'interprétation ou de traduction</i>").</p> <p>d) The Bill mentions simply (in Article 3-2(1)) that interpretation shall be provided from the moment of the questioning until the end of the criminal procedure ((...) <i>dès qu'elle est interrogée, à titre de personne susceptible d'avoir commis une infraction (...) et jusqu'au terme de la poursuite pénale</i>). As mentioned in sub-section b) above, according to Article 3-2(3) of the Bill, if it is concluded that the person does not speak or understand the language of procedure, interpretation shall be provided without delay.</p>
1.1.2	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) Please refer to the answer provided under 1.1.1, as the provision mentioned therein is a general one and applicable to all stages of the procedure.</p> <p>b) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.</p>

		c) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.
		d) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.
1.1.3	<ul style="list-style-type: none"> <li>any necessary interim hearings;</li> </ul>	a) Please refer to the answer provided under 1.1.1, as the provision mentioned therein is a general one and applicable to all stages of the procedure.
		b) Please refer to the answer provided under 1.1.1, as the provision mentioned therein are general ones and applicable to all stages of the procedure.
		c) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.
		d) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.
1.1.4	<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) If the Bill is approved, an Article 3-2 will be inserted in the CIC, whose paragraph (6) (second part) contains a general provision on the authority responsible for determining the need of interpretation during communication between persons and their legal counsels (on request of the person or the legal counsel): “the authority before which the questioning or hearing takes place, or the authority that should decide on the procedural application or on the appeal to be lodged” ( <i>l'autorité devant laquelle a lieu l'interrogatoire ou l'audience ou qui devrait statuer sur la demande ou la voie de recours qu'il est envisagé d'introduire</i> ).
		b) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure. In addition, it should be underlined that - as mentioned in previous sub-section (a)) - interpretation of the communication between the person and the legal counsel may be requested by the person or the legal counsel (which allows for the legal counsel him/herself to ascertain whether the person speaks and understands the language of the proceedings).
		c) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.

		d) Please refer to the answer provided under 1.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.
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>	There is no legal provision specifically applicable to how authorities ensure interpretation into rare/lesser known languages because the law allows for the possibility to choose interpreters and translators that are not part of the list of sworn interpreters and translators. Article 3 of the Law designating sworn experts, translators and interpreters mentions that interpreters should be picked among sworn experts, translators and interpreters but includes exceptions. One of the exceptions is the impossibility of promptly providing with their services (“(...) <i>en raison de l’impossibilité de recourir promptement aux services d’un expert, traducteur ou interprète assermenté spécialisé en la matière</i> ”).Indeed, if no official interpreters or translators are available, <i>ad hoc</i> ones can be chosen, as long as they take an oath – Article 4 of the Law designating sworn experts, translators and interpreters. A similar provision exists also in the CIC, Article 70, paragraph (2).In practice it happens, in urgent cases, that translators and interpreters are chosen among closely related persons <sup>18</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</b>	Article 3-2(8) of the CIC as proposed by the Bill provides for the possibility to challenge the absence or quality of the interpretation or to challenge the decision that no interpretation is needed ( <i>Si la personne conteste l’absence ou le refus d’interprète ou la qualité de l’interprétation, elle peut, sans préjudice notamment des recours prévus par les articles 48-2 et 126, de l’appel ou d’une demande de remise de l’affaire, faire des observations qui sont soit mentionnées dans le procès-verbal ou dans le plumitif d’audience si elles sont faites immédiatement, soit versées au dossier si elles sont faites ultérieurement</i> ). This Article is not clear as to details on different stages of proceedings. The Council of State Opinion to the Bill <sup>19</sup> also referred to this Article as lacking precision. The Council of State mentioned, in specific, that it is not clear how the individual can make observations, which kind of observations and how is that complemented with the right to appeal <sup>20</sup> . According to one of the stakeholders <sup>21</sup> , to contest the absence or quality of the interpretation ensures that it is possible to keep procedural trace of it and hence makes it possible to prove a violation of the right to defense likely to cause the procedure to be void.

<sup>18</sup> Luxembourg, prosecutor.

<sup>19</sup> Luxembourg, Council of State (*Conseil d’État*), Opinion to the Bill 6758 strengthening the procedural guarantees in criminal matters (*Avis du Conseil d’État sur le Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 02.06.2016, available at: [www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6758#](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6758#).

<sup>20</sup> Luxembourg, Council of State (*Conseil d’État*), Opinion to the Bill 6758 strengthening the procedural guarantees in criminal matters (*Avis du Conseil d’État sur le Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 02.06.2016, pp. 5/6, available at: [www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6758#](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6758#)

<sup>21</sup> Luxembourg, prosecutor.

	<b>practitioners.</b>	
<b>1.4</b>	With regard to remote interpretation via communication technologies :	
	a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?	Article 3-2 (5) as proposed by the Bill provides for the possibility of having videoconference for the purpose of remote interpretation.
	b) Which technologies are used, if any (videoconference, telephone, internet, etc.)	The Bill 6381 on the reform of enforcement of sentences <sup>22</sup> proposes that a Title on “videoconference” is introduced in the CIC (Articles 553 to 562). According to one of the Articles in this title (Article 553, paragraph 2), electronic means of communication ( <i>moyens de télécommunication audiovisuelle</i> ) include all means enabling distant communication and transmission of sound and image.
	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</b>	To rely on tools developed by the European Union is a practical and technical issue that is legally provided for <sup>23</sup> .

<sup>22</sup> Luxembourg, Chamber of Deputies (*Chambre des députés*), Bill 6381 on the reform of enforcement of sentences (*Projet de loi 6381 portant réforme de l'exécution des peines*), 12.01.2012, available at: [www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6381](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6381) .

<sup>23</sup> Luxembourg, prosecutor.

	<b>organisations and/or practitioners.</b>			
	<b>TRAINING<sup>24</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	Luxembourg's legislation does not have any specific provisions on the communication with the assistance of an interpreter, nor with training for this purpose. The Bill pending adoption in Parliament also does not have any specific provisions on the topic.

---

<sup>24</sup> See in particular Article 6 and relevant recitals of Directive 2010/64/EU.

2.	RIGHT TRANSLATION DOCUMENTS <sup>25</sup>	TO OF	Brief Description
2.1	<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>		
2.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) Current existing legal provisions in Luxembourg do not specifically provide for the documents considered essential to translate.</p> <p>The Bill pending approval in the Parliament specifically identifies the documents considered essential to translate in all stages of the procedure (in paragraph (3) of Article 3-3 to be introduced in the CIC).</p> <p>In the phase of police questioning, the only document considered essential to translate is the written notification provided for by Article 46, paragraph (4) (<i>la convocation écrite prévue par l'article 46, paragraphe (4), deuxième alinéa</i>). Article 46 (4) of the CIC refers to the information to be provided to the person under questioning. In case the person is invited for the questioning through a written notification, this notification should contain the information to be provided to the person invited for questioning. In case a person who is about to be questioned without having received a written notification, information to be provided under this Article can be so orally or in writing (but in any case always before it is proceeded to the questioning). Record of the fact that information was provided shall be kept</p> <p>Paragraph (4) of Article 3-3 of the CIC as proposed by the Bill adds that authorities shall decide whether any other documents are essential to safeguard the fairness of the proceedings.</p>	

<sup>25</sup> See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

		<p>b) Please refer to the answer provided under 1.1.1, c), as the provisions mentioned therein are general ones applicable to all stages of the procedure for both interpretation and translation.</p> <p>c) The Bill, if adopted, will introduce Article 3-3 in the CIC, which has one paragraph - paragraph (1) – referring to a “reasonable period of time” (<i>un délai raisonnable</i>).</p>
2.1.2	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) The Bill pending approval in the Parliament refers to the documents considered essential to translate (in paragraph (3) of Article 3-3 to be introduced in the CIC). In the phase of court hearings the following documents are essential to translate: the summons to a court hearing, the sentencing judgement, including a criminal order (<i>la citation à comparaître devant la juridiction de jugement, la décision statuant sur l’action publique et portant condamnation, y compris l’ordonnance pénale</i>).</p> <p>Paragraph (4) of Article 3-3 of the CIC as proposed by the Bill adds that authorities shall decide whether any other documents are essential to safeguard the fairness of the proceedings.</p> <p>b) Please refer to the answer provided under 2.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.</p> <p>c) Please refer to the answer provided under 2.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.</p>
2.1.3	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) The Bill pending approval in the Parliament refers to the documents considered essential to translate (in paragraph (3) of Article 3-3 to be introduced in the CIC). In the case of necessary interim hearings these documents are: summon to appear, order for bringing persons to court, arrest warrant, European arrest warrant and warrant of committal; orders imposing judicial supervision and changing judicial supervision measures; the refusal, complete or partial through the imposition of judicial supervision measures, of a request for interim release or the confirmation of such a decision on appeal; requests of the Prosecutor General or of the civil party foreseen by Article 127, paragraphs (2) and (3) (<i>le mandat de comparution, d’amener, d’arrêt, d’arrêt européen et de dépôt ; l’ordonnance de placement sous contrôle judiciaire et de modification du contrôle judiciaire ; la décision de rejet, pur et simple ou partiel par placement sous contrôle judiciaire, d’une demande de mise en liberté provisoire ou la confirmation d’une telle décision sur appel ; le réquisitoire du procureur d’Etat ou la requête de la partie civile visés par l’article 127, paragraphes (2) et (3)</i>).</p> <p>Paragraph (4) of Article 3-3 of the CIC as proposed by the Bill adds that authorities shall decide whether any other documents are essential to safeguard the fairness of the proceedings.</p>

		<p>b) Please refer to the answer provided under 2.1.1, as the provision mentioned therein are general ones and applicable to all stages of the procedure.</p> <p>c) Please refer to the answer provided under 2.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.</p>
2.1.4	<ul style="list-style-type: none"> <li>any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?</li> </ul>	<p>a) The Bill pending approval in the Parliament refers to the documents considered essential to translate (in paragraph (3) of Article 3-3 to be introduced in the CIC). Please refer to the answers provided under 2.1.1, 2.1.2 and 2.1.3 for the documents essential to translate in each phase of the proceedings. Paragraph (4) of Article 3-3 of the CIC as proposed by the Bill adds that authorities shall decide whether any other documents are essential to safeguard the fairness of the proceedings.</p> <p>b) Please refer to the answer provided under 2.1.1, as the provision mentioned therein are general ones and applicable to all stages of the procedure.</p> <p>c) Please refer to the answer provided under 2.1.1, as the provisions mentioned therein are general ones and applicable to all stages of the procedure.</p>
2.2	<p>How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>The Bill foresees the possibility of oral translation or oral summary in exceptional situations on the condition that those oral translations do not prejudice the fairness of the proceedings (Article 3-3(7) of the CIC). In practice, this translation is provided by the interpreter in certain phases of the procedure or in the framework of a meeting with the legal counsel<sup>26</sup>.</p>
2.3	<p>Please describe procedures in place, if</p>	<p>Article 3-3, paragraph (8), of the CIC proposed by the Bill provides for the possibility to challenge the absence, delay or the quality of a translation or the decision that no translation is needed (<i>La personne qui conteste le</i></p>

<sup>26</sup> Luxembourg, prosecutor.

	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>	<i>défaut, le refus ou le délai de traduction ou la qualité de celle-ci peut, sans préjudice notamment, des recours prévus par les articles 48-2 et 126, de l'appel, d'une demande de remise de l'affaire ou d'une demande en relevé de la déchéance résultant de l'expiration d'un délai imparti pour agir en justice, faire des observations qui sont soit mentionnées dans le procès-verbal d'interrogatoire, dans le plumeitif d'audience ou versées au dossier).</i> This Article, if approved, will be in the general part of the CIC and therefore apply to all stages of the procedure. According to one of the stakeholders <sup>27</sup> , to contest the absence or quality of the interpretation ensures that it is possible to keep procedural trace of it and hence makes it possible to prove a violation of the right to defense likely to cause the procedure to be void.		
		<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
<b>2.4</b>	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?	X		If the Bill is approved, the text of Article 3-3 of the CIC will provide for translation of all the documents that are notified ( <i>notifiés</i> ) by post or served/notified in person by a court officer ( <i>signifiés</i> ) to the suspected or accused person or to which they have the right of access that are essential to exercise the right of defense, regardless of whether or not their signature is needed.
<b>2.5</b>	Is it possible to waive the right to translation of documents and if so, what form can it have and under which conditions can it be accepted?	X		According to Article 3-3 (10) of the CIC as proposed by the Bill, a person can only renounce to the right to translation if s/he does it so in an explicit and informed manner ( <i>de façon expresse et éclairée</i> ). However, the Bill does not provide any further details on how this can be put in practice and whether the right to translation can be waived orally and/or in writing.

---

<sup>27</sup> Luxembourg, prosecutor.

3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION <sup>28</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		Regulations implementing the Law designating sworn experts, translators and interpreters publish the lists of experts, translators and interpreters designated by the Ministry of Justice (Article 1 of the Law designating sworn experts, translators and interpreters) by way of ministerial orders. The experts, translators and interpreters are first designated by the Ministry of Justice by way of ministerial orders and these lists with these designated experts are later on published in the form of Regulations
	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	There is no legal provision indicating that the name has to be in the list. However, according to Article 3 of the Law designating sworn experts, translators and interpreters preference will be given to translators and interpreters whose names are in the list, with very few exceptions allowed: for reasons of distance, family relationship, alliance, opposite interests or other reasons of legitimate suspicion or due to the impossibility to promptly request the services of a sworn expert, translator or interpreter ( <i>pour cause d'éloignement, de parenté, d'alliance, d'intérêts opposés ou pour d'autres motifs de suspicion légitime ou en raison de l'impossibilité de recourir promptement aux services d'un expert, traducteur ou interprète assermenté spécialisé en la matière, il ne devienne nécessaire ou utile de faire un autre choix</i> ).
	c) Who has access to these databases?	<b>Brief Description:</b> The lists are published in Regulations implementing the Law designating sworn experts, translators and interpreters.		
	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	<b>Brief Description:</b> No legal provisions were found on the qualifications needed by translators and interpreters.		

<sup>28</sup> See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

	the database?			
	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		According to Article 2 of the Law designating sworn experts, translators and interpreters can revoke the nomination of names for the list if they fail to meet their obligations or professional conduct or for other serious reasons. According to the text now proposed by the Bill, interpreters and translators incur in criminal responsibility if they don't respect confidentiality of interpretation and translation (Article 6 to be introduced in the Law designating sworn experts, translators and interpreters, in case the Bill is approved).
	f) Is access to existing databases provided through the <a href="#">European e-Justice portal</a> ? <sup>29</sup> How is this register available to legal counsel and relevant authorities?		X	No specific provisions on the e-Justice portal were found.
	g) Are criminal justice institutions required to use interpreters and translators listed in these registers?		X	According to Article 3 of the Law designating sworn experts, translators and interpreters preference shall be given to translators and interpreters whose names are in the list, with very few exceptions allowed (exceptions: <i>pour cause d'éloignement, de parenté, d'alliance, d'intérêts opposés ou pour d'autres motifs de suspicion légitime ou en raison de l'impossibilité de recourir promptement aux services d'un expert, traducteur ou interprète assermenté spécialisé en la matière, il ne devienne nécessaire ou utile de faire un autre choix</i> ).
<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	X		Interpretation - Article 3-2(8) of the CIC as proposed by the Bill provides for the possibility to challenge the absence or quality of the interpretation or the decision that no interpretation is

<sup>29</sup> <https://e-justice.europa.eu/home.do?plang=en&action=home>

	<p>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?</p>			<p>needed.  Translation - Article 3-3(8) of the CIC as proposed by the Bill provides for the possibility to challenge the absence, delay or the quality of a translation or the decision that no translation is needed.  These Articles, if approved, will be in the general part of the CIC and therefore apply to all stages of the procedure.</p>
	<p>b) Is there any procedure in place to ensure that suspects or accused persons have the possibility, when interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation?</p>	X		<p>Interpretation - Article 3-2(8) of the CIC as proposed by the Bill provides for the possibility to challenge the absence or quality of the interpretation or the decision that no interpretation is needed.  Translation - Article 3-3(8) of the CIC as proposed by the Bill provides for the possibility to challenge the absence, delay or the quality of a translation or the decision that no translation is needed.  These Articles, if approved, will be in the general part of the CIC and therefore apply to all stages of the procedure.</p>
	<p>c) Are there any mechanisms in place that</p>		X	<p>No provisions were found in the sense of requiring immediate replacement, though it can result from the means to challenge the quality of the interpretation (as mentioned in previous two sub-</p>

	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.			sections). In case there are complaints about the quality of the interpretation/translation, unacceptable delays or other irregularities, these should immediately be communicated to the Prosecutor's Office in view of a possible withdrawal of the interpreter/translator appointment <sup>30</sup> .
<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>31</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		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments.
	b) suspect or accused persons with intellectual		X	

<sup>30</sup> Luxembourg, General Prosecutor (*Procureur Général d'Etat*) (2015), circular note concerning the implementation of the obligations arising from Directive 2010/64/EU on the right to interpretation and translation in criminal procedures while waiting for its transposition (*Note concernant l'exécution des obligations découlant de la directive 2010/64/UE relative au droit à l'interprétation et à la traduction dans le cadre des procédures pénales dans l'attente de la transposition de celle-ci*), 05 February 2015 (unpublished), pp. 9/10.

<sup>31</sup> See in particular recital 27 of Directive 2010/64/EU.

	impairment or disability;			
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).		X	
<b>3.4</b>	Is there any recording procedure to note that interpretation and translation have occurred and in which form? <sup>32</sup> If yes, briefly provide information on how this procedure is organised in practice.	X		Articles 3-2(7) and 3-3(7) as proposed by the Bill provide for record-keeping to note that interpretation and translation have occurred. These Articles will be in the general part of the CIC and therefore apply to all stages of proceedings.

---

<sup>32</sup> See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

## SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS <sup>33</sup>	Brief Description
1.1		<p><b>Please provide answers to the following for each stage of proceedings as indicated below:</b></p> <p>a) 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) The Bill proposes amendments to Article 46(4) of the CIC, which describes the information to be provided to the person subject to questioning: on the nature and date of the criminal offence they are suspected of having committed, on the right to make observations or to remain silent, on the entitlement to be assisted by a lawyer and to obtain free legal advice if the conditions for such advice are met, as well as on the rights to interpretation (Article 3-2) and translation (Article 3-3) (<i>de la nature et de la date présumée de l'infraction sur laquelle porte l'interrogatoire, de son droit de faire des déclarations et de répondre aux questions qui lui sont posées ou de se taire, de son droit de se faire assister par un avocat et de bénéficier de l'assistance judiciaire si elle remplit les conditions légales prévues ainsi que</i></p> <p>d) <i>des droits conférés par les articles 3-2 et 3-3.</i>)</p> <p>b) Articles 46 and 3-2(9) of the CIC as proposed by the Bill will, if adopted, govern this matter. According to Article 46, if there is a written notification for the questioning, information shall also be provided in written form. If the notification is not written, information may be provided both orally or in writing. Article 3-2(9) of the CIC mentions that information on the possibility of assistance by an interpreter may be given orally or in writing.</p> <p>c) If the person is summoned for the questioning, this information is received together with the written notification. In case a person is about to be questioned without having received a written notification, information shall always</p>

<sup>33</sup> See in particular Article 3 and relevant recitals (SEE) of Directive 2012/13/EU.

		be provided before it is proceeded to the questioning (orally or in writing) - Article 46 (4) of the CIC as proposed by the Bill.
	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) During the trial stage, the written notification shall contain, similarly to the one mentioned under “police questioning”, the following information: the nature and date of the criminal offence they are suspected of having committed, the provisions of article 185, 187 and 188, the right to make observations or to remain silent, the entitlement to be assisted by a lawyer and to obtain free legal advice if the conditions for such advice are met, as well as the rights to interpretation (Article 3-2) and translation (Article 3-3) – as results from the reading of Article 184 of the CIC as proposed by the Bill.</p> <p>b) This information shall be given in writing (sent to the person in a written notification) – Article 184 as proposed by the Bill. In addition, Article 3-2(9) of the CIC as proposed by the Bill mentions that information on the possibility of assistance by an interpreter may be given orally or in writing.</p> <p>c) This information is to be sent to the person together with the written notification sent in the beginning of the trial stage.</p>
	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) In the investigating phase, the following information shall be provided to the person suspected of having committed the criminal act: background and acts that the person is suspected of having committed; already accomplished steps of the procedure; the right to be assisted by a lawyer and to obtain free legal advice if the conditions for such advice are met; the right to make observations and answer to questions or to remain silent. This is stipulated by Article 81 of the CIC as proposed by the Bill.</p> <p>b) The information is to be provided during the person’s first appearance in court (Article 81 (1) as proposed by the Bill) during this investigating phase and is therefore to be provided orally. In addition, please refer to the answer provided in b) above (for the phase of court hearings) concerning Article 2-2(9) of the CIC, as the provision mentioned therein is a general one and applicable to all stages of the procedure.</p> <p>c) As mentioned above (in b)), the information is to be provided during the person’s first appearance in court during this investigating phase.</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</li> </ul>	<p>a) All Articles applicable in the different stages of the procedure refer to the person’s right to be assisted by a lawyer and to obtain free legal advice if the conditions for such advice are met.</p> <p>b) As mentioned above, during the police questioning the information can be provided orally or in writing, during the trial stage (please see answer for “court hearings”), information is given in writing and in other hearings occurring during the investigating phase information is provided orally.</p>

	hearing during the proceedings?	c) Please refer to the answers provided in c) above for each of the different phases, as they are also applicable here.
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.	No legal provisions were found.
2.	<b>LETTER OF RIGHTS<sup>34</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>Articles 39(2) and 52-1 of the CIC as proposed by the Bill mention the information provided for by the Letter of Rights. According these articles, information on the following should be provided: the right to interpretation and translation, the right to appeal and that the measure depriving of freedom cannot be applied for more than 24 hours, the right to medical assistance, to inform someone else and/or the consulate or embassy about the arrest or detention, the right to be visited by representatives of the consulate or embassy, the right to be assisted by a lawyer and to obtain free legal advice if the conditions for such advice are met, of the nature and date of the criminal offence the person is suspected or accused of having committed, of the right to make observations or to remain in silent.</p> <p>The Bill has no specific provisions concerning the letter of rights when children are arrested or detained.</p>

<sup>34</sup> See in particular Article 4 and relevant recitals (SEE) of Directive 2012/13/EU.

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>The Bill foresees the amendment of Article 39 and the introduction of Article 52-1 of the CIC, both referring to the Letter of Rights.  According to Article 39(2), the letter of rights is provided to the person from the moment of detention (<i>[d]ès sa rétention</i>). Article 52-1(1) is applicable in case of arrest warrant and lays down that the person shall also be informed from the moment in which the deprivation of liberty occurs (<i>dès sa privation de liberté</i>).  In addition, the Bill also suggests amendments to Article 7 of the amended Act of 17 March 2004 on the European Arrest Warrant and the surrender procedures between Member States of the European Union<sup>35</sup>. According to this Article, minutes of the arrests, notifications and information (including the Letter of Rights) shall be drawn up and sent to the public prosecutor the latest 24 hours after the arrest.</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 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</b></p>	<p>Both articles of the CIC mentioned in the previous sub-section provide for the Letter of Rights to be written in a language that the person detained/arrested understands (<i>dans une langue que la personne retenue comprend</i>).  As for the Letter of Rights in European Arrest Warrant proceeding, the Law on the European Arrest Warrant and the surrender procedures between Member States of the European Union will also contains a similar provision if the Bill is approved: the Letter shall be written in a language that the person understands (<i>dans une langue qu'elle comprend</i>). This Article further mentions that in case the Letter is not available in such a language, oral translation shall be provided and the Letter of Rights in a language the person understands shall be sent to him/her without undue delay.</p>

<sup>35</sup> Luxembourg, Act of 17 March 2004 on the European Arrest Warrant and the surrender procedures between Member States of the European Union (*La loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne*), 22.03.2004, available at: [www.legilux.public.lu/leg/a/archives/2004/0039/2004A05881.html?highlight](http://www.legilux.public.lu/leg/a/archives/2004/0039/2004A05881.html?highlight)

	<b>practitioners.</b>	
<b>3.</b>	<b>RIGHT TO INFORMATION ABOUT THE ACCUSATION<sup>36</sup></b>	<b>Brief Description</b>
<b>3.1</b>	What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally or in writing)	According to Article 81 of the CIC as foreseen by the Bill, the following information shall be provided to the person suspected of having committed the criminal act: background and acts that the person is suspected of having committed; already accomplished steps of the procedure; the right to be assisted by a lawyer and to obtain free legal advice if the conditions for such advice are met; the right to make observations and answer to questions or to remain silent.
<b>3.2</b>	At which stage of the proceedings is the information provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	This information is to be provided during the suspected person's first appearance before the investigating judge (Article 81 (1) of the CIC).
<b>3.3</b>	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation	Article 81 (7) of the CIC as foreseen by the Bill applies to the moment following the first declarations by the suspected person/questioning. This Article refers that in case the criminal acts or their classification change at this moment, the investigating judge must inform the accused person of the new acts that the person is accused of having committed or their new classification. In its opinion to this paragraph of Article 81, the Council of State criticised the formulation of this provision, stating that the new acts that the person is accused of having committed

<sup>36</sup> See in particular Article 6 and relevant recitals (SEE) of Directive 2012/13/EU.

	change?	<p>should always be informed and therefore the provision should not give the investigating judge an option to choose (“or”) to inform about the new acts or the new classification of the acts<sup>37</sup>.</p> <p>Article 86-2 as foreseen by the Bill complements Article 81 (7) by specifying that whenever the investigating judge concludes that the criminal acts that the person is accused of having committed have a different classification, s/he shall notify the accused person, after having received observations from the General Prosecutor.</p>
<b>4.</b>	<b>RIGHT OF ACCESS TO CASE MATERIALS<sup>38</sup></b>	<b>Brief Description</b>
<b>4.1</b>	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	According to Article 85(1) of the CIC as proposed by the Bill, the suspected or accused persons can have access to the whole file ( <i>dans son ensemble</i> ) with the exception of the elements related to procedural steps/activities in progress ( <i>devoirs en cours</i> ).
<b>4.2</b>	At what stage of the proceedings is access to case materials granted? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	<p>The Bill, if adopted, will introduce amendments in three articles of the CIC that govern this matter.</p> <p>Before the first questioning by the investigating judge, access to case material shall be granted the latest three working days before the questioning and, in case the person was arrested or in case of an arrest warrant, the latest thirty minutes before the questioning, as Article 85 (1) lays down. <b>From that moment onwards, access to case material is granted at any point of the investigating phase – Article 85 (2).</b></p> <p><b>When the investigating judge orders the investigation closed, the accused and civil party shall be given a period of at least eight working days before the case is submitted to the district court during which access to case material is granted (Article 127 (6)).</b></p> <p>Before the hearing, the accused, the civil party and any other person concerned have the right to receive a copy of the file for a reasonable period of time (<i>dans un délai raisonnable avant la date fixée pour l’audience</i>) (Article 182-1). This possibility already existed in practice, but was not expressly foreseen by any legal provision<sup>39 40</sup></p>

<sup>37</sup> Luxembourg, Council of State (*Conseil d’État*), Opinion to the Bill 6758 strengthening the procedural guarantees in criminal matters (*Avis du Conseil d’État sur le Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 02.06.2016, p. 15, available at:

[www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6758#](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6758#).

<sup>38</sup> See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

		No access to case materials is granted during the police questioning stage <sup>41</sup> .
4.3	Under what circumstances is access to material refused? Who takes the decision of refusal?	Article 85 (2) of the CIC as proposed by the Bill mentions that the right to have access to the file may be restricted by way of reasoned order of the investigating judge, if there is serious and substantiated evidence of external or internal security of the State opposing to it ( <i>raisons sérieuses et circonstanciées de sécurité extérieure ou intérieure de l'Etat s'y opposent</i> ) or if there are serious reasons to believe that the access constitutes a real danger of obscuring evidence ( <i>raisons sérieuses de craindre que la consultation engendre un réel et actuel danger d'obscurcissement des preuves</i> ).
5.	<b>CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING &amp; SPECIAL MEASURES<sup>42</sup></b>	<b>Brief Description</b>
5.1	In which languages can information be provided for the following?	
	a) information on procedural rights	No legal provisions found.
	b) letter of rights	Both articles of the CIC mentioned in previous sub-sections 2.2 and 2.3 provide for the Letter of Rights to be written in a language that the person detained/arrested understands ( <i>dans une langue que la personne retenue comprend</i> ). As for the Letter of Rights in European Arrest Warrant proceeding, the Law on the European Arrest Warrant and the surrender procedures between Member States of the European Union will also contains a similar provision if

<sup>39</sup> Luxembourg, Chamber of Deputies (*Chambre des députés*), Bill 6758 strengthening the procedural guarantees in criminal matters (*Projet de loi 6758 renforçant les garanties procédurales en matière pénale*), 23.12.2014, p. 51, available at:

[www.chd.lu/wps/PA\\_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/188/367/138676.pdf](http://www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/188/367/138676.pdf).

<sup>40</sup> Luxembourg, prosecutor.

<sup>41</sup> Luxembourg, prosecutor.

<sup>42</sup> See in particular Articles 3 - 8 and relevant recitals (SEE) of Directive 2012/13/EU.

		the Bill is approved: the Letter shall be written in a language that the person understands ( <i>dans une langue qu'elle comprend</i> ). This Article further mentions that in case the Letter is not available in such a language, oral translation shall be provided and the Letter of Rights in a language the person understands shall be sent to him/her without undue delay.		
	c) information about the accusation	No legal provisions found.		
	d) case materials	No legal provisions found.		
		<b>Ye s</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>			
	a) information on procedural rights	X		There are no articles specifically providing for the right to challenge the failure or refusal to provide information on procedural rights. However, general legal provisions provide for possibilities to challenge that are also applicable in such situations: appeal on the grounds of a void questioning or of the investigating phase (Articles 48-2 and 126 of the CIC); possibility of appeal against decisions that have failed to fulfil their obligations; if the summons to appear does not contain such information, possibility to request that the case is referred back; possibility to make a request to recognise that they were deprived of, for example, the right to challenge a decision, due to the fact of not having been informed about this right; in an appeal and opposition procedure, there is the possibility to question the respect for the fairness of proceedings.
	b) letter of rights	X		There are no articles specifically providing for the right to challenge the failure or refusal to provide information on letter of rights. However, general legal provisions provide for possibilities to challenge

			that are also applicable in such situations: appeal on the grounds of a void questioning or of the investigating phase (Articles 48-2 and 126 of the CIC); possibility of appeal against decisions that have failed to fulfil their obligations; if the summons to appear does not contain such information, possibility to request that the case is referred back; possibility to make a request to recognise that they were deprived of, for example, the right to challenge a decision, due to the fact of not having been informed about this right; in an appeal and opposition procedure, there is the possibility to question the respect for the fairness of proceedings.
	c) information about the accusation	X	Apart from general applicable provisions as mentioned above in “a) information on procedural rights” and “b) letter of rights”, Article 81 (11) of the CIC as proposed by the Bill refers that the provisions of paragraph (1) of the same Article (concerning information to be provided about the accusation) shall be respected, otherwise it would be void ( <i>à peine de nullité</i> ).
	d) access to case materials	X	Apart from general applicable provisions as mentioned above in “a) information on procedural rights” and “b) letter of rights”, Articles 85(3) as proposed by the Bill refers to the possibility of appeal of the investigating judge’s decision on the request to receive copies of the file.  Article 127(6) of the CIC mentions that the file shall be at the disposal of the accused and the civil party for consultation, otherwise it would be void ( <i>à peine de nullité</i> ).
<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	Articles 46 ( <b>police questioning stage</b> ) and 81 ( <b>investigating stage</b> ) of the CIC as proposed by the Bill provide for record-keeping about information on procedural rights. Article 81 (10) mentions that the written records shall include the date and time in which the person was informed of the rights, as well as the date and time of the person’s release (for the cases in which the person was deprived of freedom).
	b) letter of rights	X	Articles 39(16) and 52-1(14) of the CIC as proposed by the Bill provide for record-keeping on letters of rights. These provisions lay down that written records of the questioning shall indicate the date and time in which the person was informed of their rights.

				In addition, the Bill also suggests amendments to Article 7 of the amended Act of 17 March 2004 on the European Arrest Warrant and the surrender procedures between Member States of the European Union <sup>43</sup> . According to that Article, minutes of the arrests, notifications and information (including the Letter of Rights) shall be drawn up and sent to the public prosecutor the latest 24 hours after the arrest.
	c) information about the accusation	X		According to Articles 184 and 381 of the CIC as foreseen by the Bill, information about the accusation is provided in written form and is served by a court official. Article 387 of the CIC further clarifies that written record is kept of the service of process (whether the person accepts or refuses to receive the information).
	d) access to case materials		X	The Bill doesn't mention any official record when a person has access to case materials. The information about access to case material is provided, both during the investigating and the trial stage, in the summons to appear in court, as results from Articles 91 (2) and 182-1 of the CIC as proposed by the Bill.
5.4	Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons (e.g. because of any physical impairments which affect their ability to communicate effectively (persons with hearing, sight or speech impediments), intellectual disabilities or			

<sup>43</sup> Luxembourg, Act of 17 March 2004 on the European Arrest Warrant and the surrender procedures between Member States of the European Union (*La loi modifiée du 17 mars 2004 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres de l'Union européenne*), 22.03.2004, available at: [www.legilux.public.lu/leg/a/archives/2004/0039/2004A05881.html?highlight](http://www.legilux.public.lu/leg/a/archives/2004/0039/2004A05881.html?highlight) .

<p>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 information on those mechanisms in relation to each of the listed vulnerable groups. Is this information in simple and accessible language?</b></p>			
<ul style="list-style-type: none"> <li>information on procedural rights</li> </ul>	a)	X	<p>If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.</p>
	b)	X	<p>-</p> <p>If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.</p>

		c)	N/A	N/A	General rules of criminal procedural law will not, in principle, be applicable to suspect or accused children because these will appear before the Youth Court (Act of 10 August 1992 on Youth Protection <sup>44</sup> ). In some exceptional situations (if the minor is more than 16 years old, the General Prosecutor Office considers that custody, education and protection measures are inappropriate and the Judge in the Youth Court so decides), the procedure will see general rules of procedural criminal law applicable, in which case all rules applicable are the same ones as for any other criminal procedure.
• letter of rights		a)	X		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.
		b)	X		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.
		c)		X	General rules of criminal procedural law will not, in principle, be applicable to suspect or accused children because these will appear before the Youth Court (Act of 10 August 1992 on Youth Protection <sup>45</sup> ). In some exceptional situations (if the minor is more than 16 years old, the General Prosecutor Office considers that custody, education and protection measures are inappropriate and the Judge in the Youth Court so decides), the procedure will see general rules of procedural criminal law applicable, in which case all rules applicable are the same ones as for any other criminal procedure.
• information about the accusation		a)	X		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.

<sup>44</sup> Luxembourg, amended Act of 10 August 1992 on Youth Protection (*Loi du 9 août 1992 relative à la protection de la jeunesse*), 25 September 1992, available at: [www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight](http://www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight).

<sup>45</sup> Luxembourg, amended Act of 10 August 1992 on Youth Protection (*Loi du 9 août 1992 relative à la protection de la jeunesse*), 25 September 1992, available at: [www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight](http://www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight).

		b)	X		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.
		c)		X	General rules of criminal procedural law will not, in principle, be applicable to suspect or accused children because these will appear before the Youth Court (Act of 10 August 1992 on Youth Protection <sup>46</sup> ). In some exceptional situations (if the minor is more than 16 years old, the General Prosecutor Office considers that custody, education and protection measures are inappropriate and the Judge in the Youth Court so decides), the procedure will see general rules of procedural criminal law applicable, in which case all rules applicable are the same ones as for any other criminal procedure.
	<ul style="list-style-type: none"> <li>access to case materials</li> </ul>	a)	X		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.
		b)	X		If the Bill is approved, Article 3-2 will be inserted in the CIC. Paragraph (2) of this Article extends the right to interpretation to persons with hearing or speech impairments. The person will, in this case, be assisted by a sign language interpreter, or by a qualified person with command of a language, method or device allowing communication with that person.
		c)		X	General rules of criminal procedural law will not, in principle, be applicable to suspect or accused children because these will appear before the Youth Court (Act of 10 August 1992 on Youth Protection <sup>47</sup> ). In some exceptional situations (if the minor is more than 16 years old, the General Prosecutor Office considers that custody, education and protection measures are inappropriate and the Judge in the Youth Court so decides), the procedure will see general rules of procedural criminal law applicable, in which case all rules applicable are the same ones as for any other criminal procedure.

<sup>46</sup> Luxembourg, amended Act of 10 August 1992 on Youth Protection (*Loi du 9 août 1992 relative à la protection de la jeunesse*), 25 September 1992, available at: [www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight](http://www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight).

<sup>47</sup> Luxembourg, amended Act of 10 August 1992 on Youth Protection (*Loi du 9 août 1992 relative à la protection de la jeunesse*), 25 September 1992, available at: [www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight](http://www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html?highlight).