

Submission Template

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

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Contents

Section A: The right to interpretation and translation in criminal proceedings	3
1. Right to interpretation	3
2. Right to translation of documents	8
3. Rights concerning both interpretation and translation	12
Section B: Right to information in criminal proceedings	18
1. Provision of information on the procedural rights	18
2. Letter of Rights	20
3. Right to information about the accusation	23
4. Right of Access to Case Materials	24
5. Cross-cutting issues: Languages, complaint mechanisms, recording & special measures	25

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	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>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	
1.1.1	<ul style="list-style-type: none"> • police questioning; 	<p>a) The responsibility rests with the Police. An arrest shall not be lawful unless the person arrested is informed in a language which he understands that such person is under arrest, even if the arrest is obvious.¹</p> <p>b) The need or otherwise of an interpreter is established through dialogue between the accused and the police at the initiation of the questioning. In practice, the need or otherwise of an interpreter is established upon commencement of the interrogation. The interrogating officer would at the start</p>

¹ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 355AC (2), available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>

		of interrogation gauge whether the suspect understands the language being spoken. This procedure is not laid down in the law. ²
		c) The costs of the interpretation are borne by the state. ³
		d) Interpretation services shall be provided 'as soon as practicable'. ⁴ The relevant provisions of the law do not explain 'as soon as practicable'. However, in practice this would mean that upon commencement of the interrogation, the interrogating officers establish whether the accused is conversant with the language being used. If not, the services of an interpreter are employed. ⁵
1.1.2	• court hearings;	a) The Magistrate of the Court establishes the need to employ an interpreter for the proceedings. ⁶ Upon arraignment of the accused, the defending lawyer or prosecutor informs the magistrate that an interpreter is requested. The Magistrate may also establish this upon accused's arraignment when taking the first deposition. If the accused is an English speaking individual, the proceedings may be carried out in English rather than employing an Interpreter.
		b) As explained in point (a), the need of an interpreter is ascertained by the notification of the defendant's lawyer or the prosecutor. The defending lawyer would usually inform the Court that his client does not understand the language of the Courts and request the need of an interpreter. This is done at the very beginning of the hearing of the case.
		c) Cost of interpreter is borne by the State. ⁷
		d) Service is to be provided as soon as practicable. ⁸ The hearing of the case would not commence prior to the appointment of an interpreter. If the interpreter could not be present for the first sitting, then the first sitting is adjourned for another date to allow the presence of an interpreter.

² Malta, legal practitioners.

³ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AE

⁴ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Articles 355AC, 534AB, 534AC

⁵ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AE

⁶ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 391

⁷ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 391

⁸ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AE

1.1.3	<ul style="list-style-type: none"> any necessary interim hearings; 	<p>a) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p> <p>b) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p> <p>c) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p> <p>d) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p>
1.1.4	<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	<p>a) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p> <p>The accused can call for an interpreter to assist him in the communication with his lawyer. This however would be established automatically upon determining that the accused needs an interpreter during the police interrogation and/or Court proceedings.</p> <ul style="list-style-type: none"> - This mechanism is covered by Article 534AC (2) of the Criminal Code, wherein interpretation shall be made available for communication between legal counsel and the accused. - This information was cross-checked with other legal practitioners in the field⁹. <p>b) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p> <p>c) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p> <p>d) Same as section 1.1.2. Once interpretation services are determined, the interpreter would be involved throughout Court proceedings.</p>

⁹ Malta, criminal lawyers.

1.2	How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters exist? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	<p>The registrar shall keep a register of translators and interpreters who are appropriately qualified¹⁰. The interpreters and translators which are employed in Court are not necessarily listed on the list, but the list serves as an aid for this end.¹¹</p> <p>With regards to interpretation into rare/lesser known languages, the Court employs trusted persons or contact private companies who have such interpreters and/or translators on their books. When necessary, the Court may also seek the help of the accused's embassy.¹²</p>
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? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	<p>There exists no specific formal procedure in such case. However, the defendant is given the right to request the review of a decision determining that there is no need for interpretation.¹³ In practice, the defendant would have to make an application to the Court to review its decision not to appoint an interpreter. The matter could be taken further by making an application before the Constitutional Courts citing grounds on Human Rights (right to a fair trial).</p>
1.4	With regard to remote interpretation via communication technologies :	

¹⁰ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Articles 355AC, 534AB, 534AC

¹¹ Malta, representative of the Court Registry.

¹² Malta, representative of the Court Registry.

¹³ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AC(5)

<p>a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?</p>	<p>Whilst such technologies are not excluded, this is not the practice as due to the geographical size of the island interpreters are present in Court¹⁴. (I have no information on instances where such technologies resorted to)¹⁵</p>
<p>b) Which technologies are used, if any (videoconference, telephone, internet, etc.)</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)? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>To address¹⁶</p>

¹⁴ Malta, legal practitioner.

¹⁵ Malta, legal practitioners.

¹⁶ Queries have been sent to the competent authorities but remain unanswered.

	TRAINING	Yes	No	Brief Description
1.5	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	There exist no programs or training in this regard.
2.	RIGHT TO TRANSLATION OF DOCUMENTS	Brief Description		
2.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</p>			
	• police questioning;	a) The Criminal Code states that the defendant is entitled to a translation of all the documents. ¹⁷ The Police are not obliged to give documents, however during interrogations the accused might be confronted with documentary evidence and questioned on that documentary evidence. If the		

¹⁷ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AD

2.1.1		<p>accused does not understand the nature of the document, then the police would have to offer a translation or a detailed explanation of that document if they are to obtain any information from the accused. In practice, at this stage translations are given orally. Whilst there is no hard and fast rule of what is translated, generally the essential passages are translated.¹⁸</p> <p>On the question of whether arrest warrants, pre-trial decisions, police custody orders etc. are considered as essential:- Yes, these would be considered as being essential since the accused ought to understand these orders being enforced against him.</p> <p>With regards to which documents will be translated or otherwise, this would largely be decided on a case by case basis. Generally speaking, documentary or viva voce evidence would be translated in writing but order or information on procedures would be given orally.</p>
		b) The cost is borne by the State. ¹⁹
		c) The law does not establish a timeframe but states that these are to be provided within a reasonable time so as to safeguard the fairness of proceedings. ²⁰
2.1.2	<ul style="list-style-type: none"> • court hearings; 	<p>a) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p> <p>Whilst there is no definition of what is essential, once a document is brought before the court, then it must carry some weight to the proceedings against the accused and in principle would therefore require translation.²¹</p> <p>With regards to which documents will be translated or otherwise, this would largely be decided on a case by case basis. Generally speaking, documentary or viva voce evidence would be translated in writing but orders or information on procedures would be given orally. As a general rule in practice, documentary evidence is considered as essential for translation but nevertheless, the necessity to</p>

¹⁸ Malta, legal practitioners.

¹⁹ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 391

²⁰ Queries have been sent to the competent authorities.

²¹ Malta, legal practitioners.

		<p>have it translated in writing would largely depend on the legal counsel since the legal counsel would have to assess the necessity or otherwise of translating such document orally to the client or whether the client should be given a typed translation.</p>
		<p>b) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
		<p>c) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
2.1.3	<ul style="list-style-type: none"> any necessary interim hearings; 	<p>a) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
		<p>b) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
		<p>c) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
2.1.4	<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	<p>a) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
		<p>b) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>
		<p>c) The section of translation of documents during interrogation stage and Court hearings are dealt with within the same section of the law and referred to as 'proceedings'. Therefore 2.1.1 is applicable.</p>

<p>2.2</p>	<p>How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>This is as ascertained with the defence counsel. The defence counsel would confirm if the client has understood the oral translation or oral summary or if a written translation is required.²²</p>
<p>2.3</p>	<p>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? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>There exists no specific formal procedure in such case. However, the defendant is given the right to request the review of a decision determining that there is no need for the translation of documents.²³ In practice, the defendant would have to make an application to the Court to review its decision not to appoint an interpreter. The matter could be taken further by making an application before the Constitutional Courts citing grounds on Human Rights (right to a fair trial).²⁴</p>

²² Malta, legal practitioners.

²³ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534 AD (3). More information is provided under 1.3 above.

²⁴ Malta, legal practitioners.

		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		Any document that is signed by the accused would automatically be considered as an essential documents, since his signature would imply that it serves as an attestation of what is contained in such document. Therefore, this would require translation. ²⁵	
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		Where the suspect or the accused waives the right to translation of documents such waiver shall be recorded in writing. The Executive Police or the Court, as the case may be, has to be satisfied that the suspect or accused has received prior legal advice or has otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily. ²⁶	
3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION				
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 exists no national database or register for legal translator or interpreters. The Court Registrar's register is the only such register which the Courts and Police authorities can utilise. Therefore, the name of the interpreter has to be listed in the database/register for their service to be used. However, this is not considered as a National register or database.	

²⁵ Malta, legal practitioners.

²⁶ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534 AD (5)

				<p>Translators and interpreters need not necessarily be listed on the Court Registrar's register but the register is commonly referred to for the appointment of an interpreter or translator. However, it is not excluded that interpreters or translators not on the list are appointed.</p> <p>With reference to the question if there are any specific qualifications for a person to be listed on the Registrar's list of interpreters or translators, there exists no such requirement.</p> <p>The police authorities can use the same list which is maintained by the Court Registrar, however this is only an option. The police also have their own list which they can utilise.²⁷</p>
		<p>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?</p>	X	
		<p>c) Who has access to these databases?</p>	Brief Description:	

²⁷ Malta, representative of the Court Registry.

		<p>d) Which professional qualifications are needed by:</p> <ul style="list-style-type: none"> • translators and • interpreters <p>in order to be registered in the database?</p>	<p>Brief Description:</p> <p>There exists no specific requirement for an interpreter or translator to be registered on the register²⁸.</p>		
		<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).</p>		X	There exists no such requirement.
		<p>f) Is access to existing databases provided through the European e-Justice portal? How is this register available to legal counsel and relevant authorities?</p>	X		List of experts is available on the European e-Justice portal through a reference link. Register is made available on an IT system in the Court registry but the Court registrar can make it available to a Magistrate upon request ²⁹ .
		<p>g) Are criminal justice institutions required to use interpreters and translators listed in these registers?</p>		X	There is no obligation to use any registers available however the registrar of the Court is to maintain database of his own. Magistrates may appoint a person who such magistrate considers suitable to perform the service requested. The name of nominated person would be added to the Registrar's list of experts. ³⁰
3.2		With regard to other mechanisms/procedures:	Yes	No	Brief Description

²⁸ Malta, representative of the Court Registry.

²⁹ <https://e-justice.europa.eu/>

³⁰ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534 AD (3)

		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	Data collected through Ad hoc requests for information with legal practitioners. ³¹
		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?	X	<p>Whilst there is no specific procedure for such cases, the law provides for the possibility of the defendant to complain on the quality of the interpretation or translation service given.³²</p> <p>In practice, the accused has the possibility to complain on the quality of the interpretation or translation service given to the Court. In practice, the accused would make an application in front of the Court making his claim about the quality of the translation and requesting the Court to accede to his claim and order a new translation.</p>

³¹ Malta, legal practitioners.

³² Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534 AC (5), 534 AD (3)

		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	No formal policy or mechanism exists for the replacement of an interpreter or translator. In practice however, the Court may uphold a written request for replacement of an interpreter or a request for the order of a new translation. ³³
3.3		Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? If yes, briefly provide information on those mechanisms considering the following vulnerable groups:	X	Details on this points are provided under answers to (a), (b) and (c) below.
		a) suspect or accused persons with physical impairment or disability;	X	The needs of deaf mutes are catered for in the Criminal Code. A translator or interpreter is appointed as the case may be in order to assist such individuals. ³⁴ During interrogation stage, the investigating officers shall not proceed to an interview without the prior intervention and certification of a medical practitioner, as to the suitability of conducting the interrogation. ³⁵

³³ Malta, legal practitioners.

³⁴ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 451

³⁵ Malta House of Representatives, Police Act, Chapter 164 of the Laws of Malta, 10th February 1961, Fourth Schedule Rule 17

		b) suspect or accused persons with intellectual impairment or disability;	X		No distinction is made in the Criminal Code between persons with intellectual impairment or persons with physical disability but the procedure adopted with deaf mutes is applied in practice, as the case may require.
		c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).	X		In case of children who are suspects or defendants, any interviews or questions are directed to their legal guardians ³⁶ .
3.4		Is there any recording procedure to note that interpretation and translation have occurred and in which form? If yes, briefly provide information on how this procedure is organised in practice.	X		When an interpreter or translator is engaged, such engagement is recorded in the acts of the Proceedings by the Magistrate.

³⁶ Malta House of Representatives, Police Act, Chapter 164 of the Laws of Malta, 10th February 1961, Fourth Schedule Rule 15

SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS	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>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>
	<ul style="list-style-type: none"> • police questioning; 	<p>a) Upon arrest, the person arrested is informed that he is being arrested, even if this may seem obvious such person is to be informed of the reasons for such arrest. The accused person should also be informed of his legal rights.³⁷</p> <p>Upon arrest, the accused is immediately informed of the right to speak with a lawyer before and is informed of the right to remain silent. These are the standard immediate rights that the accused is informed of. However, the letter of rights is then read out and a copy is given to the accused. If the police are only enquiring with a person and such person is not under arrest, no rights are read out to the person.³⁸ If the person is NOT under arrest, there is no obligation to inform the person to remain silent or that he has a right to a lawyer. The reason being is that by ‘<u>enquiring</u>’ the police would only be speaking to a member of the public in order to obtain information and the does not make such activity an ‘interrogation’. If on the other hand, the person is under arrest, then arrested person must be informed of his rights and the letter of rights would be read out to the arrested person.</p> <p>b) The information shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspected or accused persons.³⁹</p>

³⁷ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 355AC

³⁸ Malta, legal practitioners.

³⁹ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AB

		This information can be given orally and it is usually given orally, but if the defendant request a written translation, this should be acceded to. ⁴⁰
		c) The law does not establish a timeframe but it states that unless certain information is provided, such arrest would be deemed unlawful ⁴¹ .
	• court hearings;	a) Upon arraignment, the accused is informed of the charges being brought against him. In cases where the accused does not have a lawyer, he is informed that he is entitled to a lawyer. ⁴²
		b) The information related to the charges being brought against the accused is provided orally and in writing. ⁴³
		c) The information referred to above is to be provided immediately upon arraignment. ⁴⁴
	• any necessary interim hearings;	a) No formal procedures pertaining to interim hearings exist. The defence however has a right to any information related to the on-going proceedings. ⁴⁵
		b) Requested information may be provided in writing or orally. ⁴⁶

⁴⁰ Malta, legal practitioners.

⁴¹ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AC(5)

⁴² Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 574A

⁴³ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AB

⁴⁴ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AB

⁴⁵ Malta, legal practitioners.

⁴⁶ Malta, legal practitioners.

		c) No explicit timeframe exists in the law.
	<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings? 	a) same as above
		b) same as above
		c) same as 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.	There can be no other scenarios where 'other procedural rights' need to be provided.
2.	LETTER OF RIGHTS	Brief Description
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?	A) the right of access to a lawyer; B) any entitlement to free legal advice and the conditions for obtaining such advice; C) the right to be informed, in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of his rights of defence, of the offence he is suspected or accused of having committed: The suspect or accused shall be promptly informed of any changes in the information given in accordance with this article where this is necessary to safeguard the fairness of the proceedings; D) the right to interpretation and translation; E) the right to remain silent; F) Right of access to documents; G) Right to inform someone else about one arrest or consulate/embassy.

		<p>H) Right to medical assistance I) The duration of arrest - maximum of 48 hours.⁴⁷</p> <p>If minors are accused or suspects, the parent or guardian of such minors must be present and the letter of rights has to be given to the parent or guardian.⁴⁸</p>
2.2	<p>At what stage of the proceedings is the letter of rights provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>This information is to be provided upon arrest.⁴⁹</p> <p>The letter itself is generally given once taken to the police station, wherein the interrogation would take place. However, where the Letter of Rights is not available in the appropriate language, the person arrested shall be informed of his rights orally in a language that he understands and the Letter of Rights shall, subsequently and without undue delay, be provided to him in a language that he understands⁵⁰</p>

⁴⁷ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Schedule E

⁴⁸ Malta House of Representatives, Police Act, Chapter 164 of the Laws of Malta, 10th February 1961, Fourth Schedule Rule 15

⁴⁹ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AB

⁵⁰ Malta House of Representatives, Police Act, Chapter 164 of the Laws of Malta, 10th February 1961, Article 61A

<p>2.3</p>	<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? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>The language used is standard and not technical in its contents.</p> <p>The only way in which the Executive Police can ascertain whether accused or suspect understands the contents is through the accused or suspect's communication with them. Such person would have to denote his understanding or otherwise of the information being given.</p> <p>This would be established through dialogue between the accused and the police at the initiation of the questioning. In practice, the interrogating officer would at the start of interrogation gauge whether the suspect understands the language of the letter of rights and this through the dialogue between the Police and the accused. This procedure is not laid down in the law.</p>
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2.4	Please provide (in an annex) an existing example of a model letter of rights that is being used in 'everyday' cases, and also an existing example of a letter of rights that is being used with respect to the European arrest warrant (in the original language and the English translation). Please include any other letter of rights in other languages that may exist in your country (including their English translations).	See Annex 2 of this report.
3.	RIGHT TO INFORMATION ABOUT THE ACCUSATION	Brief Description
3.1	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>When a person is arrested, the police shall have the duty to inform the accused that he is in fact under arrest, even if the arrest appears evident.</p> <p>The arrested person has the right to be informed, at the time of the arrest or his/her detention, in a language which is understood by the accused, the reasons for the arrest or detention. If the accused has been arrested by a warrant issued by a Magistrate, the accused shall have the right to a copy of that warrant which shall be signed by the Magistrate who issued the said warrant.⁵¹</p> <p>This information is provided both orally and in writing.⁵²</p>

⁵¹ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Schedule E Part 1 B

⁵² Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AB

3.2	<p>At which stage of the proceedings is the information provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>This information is provided upon arrest both orally and in writing.⁵³ Upon arraignment, the charges would be read out to the accused and the accused would either admit the charges or plead not guilty.</p>
3.3	<p>How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation change?</p>	<p>These are informed in writing and orally and the interrogatory stage of the proceedings is held afresh.</p> <p>If the charges or details of the charges are changed, the accused is asked to give his details again and to plead whether he is guilty or not guilty. The accused is then deemed notified of the changes and the accused will be asked whether he wants to start with proceedings or not. Once the case reaches a stage of trial by jury, the accusations or details of the accusation cannot be changed unless the prosecutor decides to withdraw a charge or charges.⁵⁴</p>
4.	<p>RIGHT OF ACCESS TO CASE MATERIALS</p>	<p>Brief Description</p>
4.1	<p>What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?</p>	<p>The person suspected or accused shall have access to all material evidence in the possession of the Police, whether for or against the said suspect or the accused, or to his lawyers in order to safeguard the fairness of the proceedings and to prepare his defence.⁵⁵ Any material evidence that will be presented in court will either be either presented by the defense or by the Police. Therefore anything in possession of the Court must have necessarily been produced by the Police. As a result therefore, in virtue of this same Article (article 534AF (1)-(3) of the Criminal Code), the accused has a right to these materials since these are the Polices' documentary evidence.</p>

⁵³ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AC(5)

⁵⁴ Malta, legal practitioners.

⁵⁵ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Article 534AF

4.2	<p>At what stage of the proceedings is access to case materials granted? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>The law does not establish a specific timeframe but provides that access to the material evidence shall be granted in due time to allow the effective exercise of the rights of the defence.⁵⁶</p>
4.3	<p>Under what circumstances is access to material refused? Who takes the decision of refusal?</p>	<p>A court or magistrate may refuse access to certain materials if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest or where it could prejudice an on-going investigation or national security.⁵⁷ Whilst not emanating directly from the law, in practice the Police would refuse access to information if they deem that such information would conflict with the fundamental rights or safety of other people. The decision for refusal would rest with the Police. However, in practice, the accused can ask in court by making a formal claim to demand the Court to overturn the Police's decision and the accused be allowed access to such document.</p>
5.	<p>CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING & SPECIAL MEASURES</p>	<p>Brief Description</p>
5.1	<p>In which languages can information be provided for the following?</p>	
	<p>a) information on procedural rights</p>	<p>Standard procedure is to provide these in Maltese and English. In practice, if the accused does not understand Maltese or English, an interpreter would be called in.</p>

⁵⁶ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Schedule E Part 1 B

⁵⁷ Malta House of Representatives, Criminal Code, Chapter 9 of the Laws of Malta, 10th June 1854, Schedule E Part 1 B

	b) letter of rights	Standard could be provided in Maltese and English.		
	c) information about the accusation	Standard could be provided in Maltese and English. In practice, if the accused does not understand Maltese or English, an interpreter would be called in.		
	d) case materials	Standard could be provided in Maltese and English. If the accused requests a written translation, in practice such wish is granted.		
		Yes	No	Brief Description
5.2	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? If yes, briefly describe the procedure where relevant.	X		
	a) information on procedural rights	X		Persons can challenge such procedural right through Court application, which could be in front of the Constitutional Court and escalated further depending on the outcome. The accused would first have to make an application in front of the Court hearing his case. If this request is not entertained by the Court, the accused can escalate the matter further with the Constitutional Court. ⁵⁸
	b) letter of rights	X		Same as 5.2 (a)

⁵⁸ Malta, legal practitioners.

	c) information about the accusation	X		Same as 5.2 (a)
	d) access to case materials	X		Same as 5.2 (a)
5.3	Is any official record kept to note the provision of information about the following? If yes, briefly describe where relevant.	X		
	a) information on procedural rights	X		A notice is recorded in the acts of the case. The signature of the accused is not a requirement. However if the accused refuses to speak to a lawyer, then the accused would sign a statement to this effect. There is no legal provision covering this element. ⁵⁹
	b) letter of rights	X		Same as 5.3 (a)
	c) information about the accusation	X		Same as 5.3 (a)
	d) access to case materials	X		Same as 5.3 (a)

⁵⁹ Malta, legal practitioners.

<p>5.4</p>	<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>If yes, briefly provide information on those mechanisms in</p>	<p>No special procedures exist with regard to vulnerable suspects or accused persons and the right to information. Such responsibility would rest with the defence counsel to ascertain that all material information is given to the accused through the service of an interpreter or translator who could effectively communicate with such vulnerable persons.</p>
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	relation to each of the listed vulnerable groups. Is this information in simple and accessible language?			
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