

Submission Template

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

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QUESTIONS

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

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

1.	RIGHT TO INTERPRETATION ¹	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 See in particular Articles 2 and 4 and related recitals of Directive 2010/64/EU.

<p>1.1.1</p>	<ul style="list-style-type: none"> • police questioning; 	<p>a) According to article 92 (2) of the Portuguese Code of Criminal Procedure² (<i>Código do Processo Penal</i>, CPP), whenever a person who does not fully understand the language of the proceedings intervenes, it is mandatory that this person is assisted by a suitable interpreter that is appointed free of charge, regardless of the knowledge the authority presiding the hearing/questioning or any other participants in it have of the language the person heard understands. Interpretation must be provided into the mother tongue of the person who does not speak Portuguese, and only when not possible into another language that the person fully understands. This right is not only of the defendant but also granted to any witness and victim.</p> <p>As defined under article 92 (7) of the CPP, both the judicial authority (defined in article 1 b) of the CPP – during the investigation stage of the proceedings, the public prosecutor or the examining magistrate) and the criminal police authority (as defined combining article 1 c) and article 1 d) of the CPP, and consisting of directors, officers, inspectors and subinspectors and all other police staff of the police forces to whom a judicial authority or the CPP recognises such competence³) in charge shall nominate an interpreter whenever a person who does not speak the language of the proceedings needs to be heard.</p> <p>In the case of police questioning, the criminal police authority shall assess the need of interpretation of the defendant and is responsible for nominating a suitable interpreter. However, some criminal police authorities, in response to CESIS queries, said that they often request that the judicial authority (namely the public prosecutor) indicates an interpreter, as the existent local</p>
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² Portugal, Decree-Law 78/87, which approves the Code of Criminal Procedure (*Decreto-Lei n.º 78/87 que aprova o Código de Processo Penal*), 17 February 1987, last amended by Law 27/2015, of the 14 of April 2015, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=199&tabela=leis.

³ The Judiciary Police (*Polícia Judiciária*, PJ), the National Republican Guard (*Guarda Nacional Republicana*, GNR) and the Police of Public Safety (*Polícia de Segurança Pública*, PSP) are criminal police authorities of generic competence, as determined in article 3 of the Law n.º49/2008, of 27 of August. Every other criminal police authority is of specific competence. For instance, such is the case of the Service for Foreigners and Borders (*Serviço de Estrangeiros e Fronteiras*, SEF). Also some upper ranks of the staff working with the public prosecution are considered criminal police authorities for the purposes of executing some investigation acts, for instance.

	<p>informal lists are not in the possession of these criminal police authorities⁴ but within courts⁵. The information is therefore shared between these entities in an attempt to find a suitable interpreter.</p> <p>b) There is no formal mechanism to ascertain if a person is in need of interpretation that the police can resort to. Criteria is legally determined (article 92 (1) of the CPP), stating that an interpreter will always be nominated to assist anyone who does not fully understand the language of the proceedings (regardless of nationality), in every procedural act including the act of being held as a defendant⁶. The evaluation of interpretation needs is therefore empirically made by the police officer. Nationality is considered an indicator and criminal police authorities' practice⁷ is of asking if the defendant wants the presence of an interpreter. The guidelines provided in the training of police officers in all interviewed criminal police authorities is that, in case of doubt, an interpreter shall be appointed, unless the defendant states that he or she is not in need of one, and that statement needs to be written in the record of questioning, which is signed by the defendant..</p> <p>In addition, the presence of a legal counsel⁸ is mandatory for these defendants for any participation in the proceedings (as determined by article 64 (1) d) of the CPP), except for the act of being hold as a defendant (and other prior pre-procedural acts). However, any person who is</p>
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⁴ The SEF, however, has its own list and the PJ has a special unit for translation within its staff that employs interpreters and translators, as will be explained more in detail further on.

⁵ Information provided during interview to the GNR for the purposes of this study, on the 24th of April, and PSP, dated of the 29th of April.

⁶ That is the understanding comprised in Portugal, Court of Appeal of Guimarães (*Tribunal da Relação de Guimarães*), Guimarães/Case 936/13.9PBBRG.G1, of the 21st of October 2013. Available at:

www.dgsi.pt/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/4a01c4388d92c8b880257c2a004ce71f?OpenDocument.

⁷ Portugal, representatives of the police.

⁸ Problems might emerge from the fact that free legal aid is only provided for those who prove financial hardship and are Portuguese or European Union (EU) citizens, foreigners or stateless persons with a valid residence permit, or foreigners without residence permit in any EU Member State who are citizens of countries with which Portugal has reciprocity agreements that guarantee the same level of legal aid to Portuguese citizens in their countries. Excluded are all third country citizens without reciprocity agreement that are either undocumented or hold a visa and not a residence permit, as well as refugees, asylum seekers and stateless people still awaiting a residence permit. However, assistance by legal counsel is mandatory, therefore the defendant will never cease to be assisted by a legal counsel, but, in case of conviction, the defendant will have to bear these costs. Also in Neves, A. C. (2011) *Os Direitos do Estrangeiro – Respeitar os Direitos do Homem*, Teses:36, Lisboa, Alto Comissariado para a Imigração e Diálogo Intercultural, I.P., pp. 136-137, available at: www.oi.acidi.gov.pt/docs/Colec_Teses/Tese36_WEB.pdf.

held defendant will necessarily be put under statement of identity and residence⁹. This is a coercive measure that, contrary to all others, does not need to be ordered by a judge but is instead by the public prosecutor or criminal authority police and is mandatory for every person that is held as a defendant. And it is in fact a continuous act to that of holding someone as a defendant, for which the presence of a legal counsel will again be mandatory if the defendant does not fully understand the language of the proceedings¹⁰.

In sum, unless it is obvious that the person does not understand the language at all, the police practice seems to be that of asking if the defendant wishes to be assisted by an interpreter. Training provides indication to name an interpreter everytime there is any doubt of the person's understanding of Portuguese. There is no checklist or other objective mechanism available other than the criteria set in the law.

c) The State bears the cost of interpretation within the proceedings and at any stage. Article 162 (1) of the CPP *ex vi* article 92 (8) of the CPP, establishes that the authority that appointed the interpreter shall be in charge of determining the amount of payment due. The exact amount is determined considering the tables approved by the Ministry of Justice or, whenever lacking, considering the fees normally paid for the same type of service (article 162 (1) of the CPP). This decision (payment to the interpreter) can be appealed or, in the case of decision by the criminal police authority or the public prosecutor, subject to hierarchical complaint (article 162 (3) of the CPP).

⁹ Article 196 (1) of the CPP, duty of which the defendant is informed upon the act of holding as a defendant as established in article 61 (3) c) of the CPP.

¹⁰ That is the understanding in Portugal, Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*) Lisbon/Case795/09.6SILSB.L1-9, of 19 of February 2015. Available at: www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/092c9b236892587a80257df6004c9f1e?OpenDocument. The General Prosecution Office representative interpreted in the same way, opinion expressed in interview dated of the 9th of April. However, precisely because it is a continuous act, according to some jurisprudence article 64 (1) d) can be read in line with the conclusion that there might not be an obligation that a legal counsel is present when a defendant who does not fully understand Portuguese is put under statement of identity and residence. That is the opinion of the judge interviewed for the purposes of this study, on the 6th of May, who believes this does not imply the compression of rights it might seem to at first glance due to the fact that the effects of the statement of identity and residence will be produced in the course of the proceedings and the defendant will have a lot of time to contact with the legal counsel immediately after being put under statement of identity and residence, right of contact he or she is informed of upon act of holding as a defendant.

During the investigation stage it will usually be the public prosecutor (or the examining magistrate, depending on the case) determining the amount due.

The amount is defined according to article 17 of the Regulation of Court Fees¹¹ that considers the market standard prices, the type of service provided (including length and difficulty) and the amount the interpreter proposes as payment but only within the limits established in a table in annex to the Regulation (table iv). Necessary travel expenses to provide the service are added to this fix amount. Currently the price for interpretation varies between 1 accounting unit (102€) to 2 accounting units (204€), according to the complexity of the interpretation. To this payment adds up the amount due for needed travel expenses. The actual payment is made by a public institute¹² with administrative and financial autonomy under the oversight of the Minister of Justice, the Financial Management and Justice Equipments Institute (*Instituto de Gestão Financeira e Equipamentos da Justiça*, IGFEJ)¹³.

However, when the investigation is still pending with the criminal police authority, it can be determined and paid by the criminal police authority. That is the case with the Judiciary Police (*Polícia Judiciária*, PJ), that in such cases makes the payment to the interpreter directly. Whenever it is an employee of the PJ, the payment is the monthly salary, however, when the interpreter is externally contracted, the interpreter is paid immediately upon the service provided.¹⁴ The funds allocated come from the PJ's general budget and the exact amounts of payment are determined by an internal table pre-defined. Payment is determined according to information provided by PJ's inspector responsible stating that such service was requested, identifying the

¹¹ Portugal, Decree-Law 34/2008, which approves the Regulation on Court Fees (*Decreto-Lei 34/2008, que aprova o Regulamento das Custas Processuais, procedendo à revogação do Código das Custas Judiciais*), 26 February 2008, last amended by Law 72/2014, of the 2 of September 2014, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=967&tabela=leis&so_miolo=& .

¹² Article 3 k) of the Status of the IGFEJ, I.P., as approved by Portugal, Order 391/2012, which approves the Status of the Financial Management and Justice Equipments Institute (*Portaria n.º 391/2012 que fixa os Estatutos do Instituto de Gestão Financeira e Equipamentos da Justiça, I.P.*), 29 November 2012, available at: dre.pt/application/file/190572.

¹³ Portugal, Decree-law 164/2012, which approves the organisation of the Financial Management and Justice Equipments Institute, I.P. (*Decreto-Lei n.º 164/2012 que aprova a orgânica do Instituto de Gestão Financeira e Equipamentos da Justiça, I.P.*), 31 July 2012, available at: dre.pt/application/file/179150.

¹⁴ Portugal, representatives of the Judiciary Police.

		<p>proceedings in question, the reason behind the request of this service, date and time of beginning and end of the interrogation, identification of the interpreter¹⁵.</p> <p>In the cases of the National Republican Guard (<i>Guarda Nacional Republicana</i>, GNR), the Public Security Police (<i>Polícia de Segurança Pública</i>, PSP) and the Service for Foreigners and Borders (<i>Serviço de Estrangeiros e Fronteiras</i>, SEF), however, this expense will always proceed in the payment of court fees and therefore will not be paid immediately upon the act itself, as previously explained. The criminal police authority designates the interpreter, communicates the measures undertaken to the competent judicial authority and payment will be made through the court channel. Only when the investigation ends with the police measures might these costs be covered by the criminal police authority (but this appears to be a merely theoretical hypothesis)¹⁶.</p> <p>d) There is no legal provision determining the timeframe for this evaluation. However, failure to appoint an interpreter will void the proceedings (article 120 (2) of the CPP) but the issue needs to be raised at the time of the procedural act itself (article 120 (3) a) of the CPP). Therefore, if the defendant is not provided with an interpreter for the hearing he/she or his or her legal counsel can always plead the voidance of the hearing. This entails that the hearing shall not be used as proof and a hearing has to be repeated (article 122 (2) of the CPP). The predeceasing acts are not null unless they cannot be considered as separate acts, therefore forming a unique procedural act. The timeframe for providing an interpreter is therefore the act itself, until the moment of the act, in this case the police questioning.</p>
1.1.2	<ul style="list-style-type: none"> • court hearings; 	<p>a) In court hearings, interpreters are nominated by the Judge, as established in article 92 (2) and (7) of the CPP.</p> <p>b) Criteria is legally determined, an interpreter will always be nominated to assist anyone (regardless of nationality) who clearly does not fully understand the language (absence of knowledge or insufficient understanding and/or speaking capacity). Usually nationality is considered an indicator. This entails, however, that no formal assessment mechanism exists¹⁷.</p>

¹⁵ Portugal, representatives of the Judiciary Police.

¹⁶ Portugal, representative and public prosecutor with the General Inspection of the Internal Affairs.

¹⁷ Portugal, judge of the Court of Appeal, public prosecutor and representative of the Portuguese Bar Association.

		<p>In the beginning of a court hearing (or any other procedural act) the defendant can also ask for an interpreter to be designated, even though one was not present in prior procedural acts.</p>
		<p>c) During trial stage the interpreter is appointed by the president judge. The amount is defined according to article 17 of the Regulation of Court Fees. Expenses will be incurred by the State and payment made by the IGFEJ, following the procedure that has been previously explained in 1.1.1 c).</p>
		<p>d) There is no legal provision determining the timeframe for this evaluation. However, the failure to appoint an interpreter will void the proceedings, voidance which needs to be raised. The timeframe for an interpreter to be designated is the hearing itself. Without the presence of an interpreter that was appointed, the hearing cannot take place. In such cases, another interpreter shall be nominated and, if one cannot be found, the hearing shall be suspended and will continue in a new date with the presence of an interpreter (article 153 (3) of the CPP <i>ex vi</i> article 92 (8) of the CPP)¹⁸.</p>
<p>1.1.3</p>	<ul style="list-style-type: none"> • any necessary interim hearings; 	<p>a) Article 92 (2) (3) (7) of the CPP are applicable to all procedural acts, which means that all interim hearings will also be bound by this norm. Thus the authority presiding the act can appoint the interpreter, and shall therefore be the responsible person for assessing interpretation needs.</p> <p>b) Criteria is legally determined, an interpreter will always be nominated to assist anyone (regardless of nationality) who clearly does not understand the language and the presence of a legal counsel is mandatory for these defendants for any participation in the proceedings (as determined by article 64 (1) d)). There is however no formal mechanism nor any guidelines to make such an assessment. Either it is self-evident (or there is reasonable doubt) that there is a lack of understanding or the defendant so informs. The General Prosecution Office (<i>Procuradoria Geral da República</i>, PGR), interviewed for the purposes of this study¹⁹, further mentioned that frequently hearings are stopped because the presiding authority realises that the defendant, who initially declared understanding the Portuguese language, does not in fact fully understand what is being said, his or her knowledge of the language is either inexistent or limited. An interpreter shall then be</p>

¹⁸ Portugal, judge of the Court of Appeal, public prosecutor, lawyer and a representative of the Portuguese Bar Association.

¹⁹ Portugal, legal practitioner.

		<p>appointed and the hearing will proceed with the presence of the newly appointed interpreter (article 153 (3) of the CPP).</p>
		<p>c) The amount to be paid is determined by the authority who nominates the interpreter, in the same terms mentioned in 1.1.1 c), for court fees.</p>
		<p>d) There is no established timeframe other than timeliness for the procedural act itself, to guarantee interpretation is there provided.</p>
<p>1.1.4</p>	<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 defendant can choose to have a different interpreter for his or her communications with his or her legal counsel, free of charge, as established in article 92 (3) of the CPP. All evidence obtained without the safeguard of this right, when requested, cannot be used in court, according to article 92 (5) of the CPP.</p> <p>In practice this possibility is seldom used²⁰. In fact, it is legally made dependent upon request by the defendant or his or her legal counsel and these often do not request it. The Portuguese Bar Association (<i>Ordem dos Advogados, OA</i>) recognises that often legal counsels do not request this appointment and has therefore made efforts to improve lawyers' awareness of this right of the defendant by focusing more and more on this issue in its initial training, but admits that it is still insufficient.</p> <p>The interpreter shall be appointed to assist in every conversation between the legal counsel and the defendant needed for the establishment of the defence strategy. Therefore, designation of the interpreter shall be made by the authority that holds the proceeding at the given moment the nomination of this interpreter is requested²¹.</p> <p>b) The appointment of an interpreter for the communications between the defendant and his or her legal counsel needs to be requested, if such need is felt, by the defendant and his or her legal counsel. The assessment of such need is therefore made by them.</p>

²⁰ Portugal, lawyer and representatives of the Portuguese Bar Association.

²¹ Portugal, lawyer, judge of the Appeal Court and representative of the Portuguese Bar Association.

It is however important to highlight that a legal counsel will have to be present at any questioning or hearing of a person who does not fully understand the Portuguese language, as established in article 64 (1) d) of the CPP, except for the act of holding someone as a defendant. Furthermore, the defendant is informed when being hold as a defendant of his or her right to be assisted by a legal counsel in every procedural act and of the right to communicate in private with his or her legal counsel when in custody, as established in article 61 (1) f) of the CPP.

Appointment of a different interpreter for communications with the legal counsel is rarely requested. However, when doing so, the interpreter appointed can be one among the contacts the courts informally have or the defendant can also suggest to the court that an interpreter of his or her trust is nominated for such purposes. But the court is not bound to accept that suggestion. The only thing the court is bound to is to ensure that an interpreter assists the defendant and his or her legal counsel in their communications and that this interpreter is suitable. Insofar the court should assess that the interpreter is honest, knowledgeable, equipped to provide the service he or she is to provide and do so in an ethical manner. From the interviews conducted for the purposes of this study we learnt that, in the experience of the practitioners interviewed²², what usually happens when the defendant and the legal counsel do not have a language allowing common understanding is that the defendant contracts privately an interpreter for all conversations with the legal counsel, including in the law firm while preparing defence or in prison in case the defendant is under pre-trial detention, for instance, and the presence of this interpreter is insofar permitted. When a defendant does not have the resources to contract privately, his or her right to a different interpreter for his or her conversations with his or her legal counsel might in practice be at risk. Another usual feature²³ is that the conversations with the legal counsel will be guaranteed by a family member or a friend of the defendant who can speak either Portuguese or another language that both understand (usually English), and insofar has a common language of understanding with the legal counsel. It however raises issues regarding independence as these relatives of the defendant are not sworn for these

²² Portugal, lawyer and interpreter.

²³ Portugal, representative of the Portuguese Bar Association.

		<p>purposes and are not bound to secrecy, like actual interpreters working within criminal proceedings are.</p> <p>c) Payment of an interpreter nominated for these purposes shall be made in the same terms as mentioned prior through payment under the Regulation on Court Fees. Since we could not find information on how it works in practice²⁴, we are not aware of how the exact terms of payment have been considered (if it is the number of hours declared to have been spent for this purpose in the lawyer's office or on visitation to a defendant in prison), but the same terms of payment per act of interpretation seem to apply.</p> <p>d) There is no legal provision regarding a timeframe for exercising this right and therefore it is a question that might arise at any moment throughout the proceedings (hence the reason why we interpret the law as determining that this appointment can occur at any given moment throughout the proceedings). When requested, it must however be with the utmost urgency, within the time needed in order to prepare the defence. According to the judge of the Appeal Court interviewed for the purposes of this study it depends on the particular act at stake. The judge is of the opinion that <i>"if [the defendant] is under custody it has to be immediate, within 24 hours as a maximum, because the proceeding with a defendant in custody is an urgent proceeding, with expedited procedure; if it is a defendant in liberty it will depend upon the act in itself. (...) Suppose that timeframe for pleading has already started, the time-limit is of 20 days, and this request is made 10 days after the start of the timeframe, [the appointment of an interpreter] should be immediate"</i>.</p>
1.2	How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters	According to information gathered during the interviews made for this study ²⁵ , when faced with rare/lesser known languages, and as a last resort, authorities contact the appropriate embassies and other diplomatic representatives. There is no requirement that these interpreters are actually

²⁴ As previously mentioned, also none of the practitioners interviewed (interpreter, judge, lawyer and lawyer representative of the Portuguese Bar Association) had had any experience with such situations. The true problem seems to be that this possibility is rarely requested.

²⁵ Portugal, representatives of the General Prosecutor Office, the Inspectorate General of Internal Affairs, the Judiciary Police, the National Republican Guard, the Directorate General Justice Administration and the Public Safety Police.

	<p>exist? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>certified, they must only be sworn to a criminal police authority or a judicial authority before providing any interpretation services²⁶.</p> <p>In the case of the PJ, this criminal police authority often resorts to the lists of interpreters SEF has available. The PJ, however, also has its own lists. In fact, the PJ has a special unit²⁷ that provides for such services for some main languages and that also creates its own lists for further languages and needs. Whenever this unit does not have a response for a certain language need, a request is made to SEF. Only if there is no available interpreter in such lists will the PJ resort to other sources, such as embassies²⁸.</p> <p>GNR and PSP, on the other hand, do not own any internal lists of interpreters and translators and resort to the lists locally made within courts, and often to interpreters that previously worked with them for the most common languages. Often it is the personal experience of the officers, as well as of court staff, with the interpreters locally available, the practical knowledge of the availability of the resources at disposal, that determines the interpreter to contact, for languages more often needed. GNR further mentioned that, for rare languages, if there is no interpreter of the court's knowledge available, this criminal police force resorts either to the consular authorities/embassies (if there is one of the country at stake in Portugal) or to the interpreters working with the High Commission for Migrations' (<i>Alto Comissariado para as Migrações, ACM</i>)²⁹.</p> <p>The SEF, on the other hand, has an extensive list of interpreters, formed mostly by interpreters that have long worked with the authorities on criminal cases, and therefore, according to the SEF representative interviewed³⁰, the qualifications and the experience of these interpreters, as well as their ethic conduct is already known.</p> <p>When it is the judicial authority that nominates the interpreter, and there is no interpreter locally known for a given language within the court, normally the authorities try to find an interpreter within the neighbouring judicial districts. The lists of SEF are also often used in case of impossibility to</p>
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²⁶ Article 91 (2) and (3) of the CPP. Requirements for interpreters and translators working in a criminal proceedings context will be further developed under section A - 3.

²⁷ Unit for Translation and Documentation of the Judiciary Police (*Área de Tradução e Documentação da Polícia Judiciária*).

²⁸ Portugal, representative of the Judiciary Police.

²⁹ Portugal, representative of the National Republican Guard.

³⁰ Portugal, representative of the Service for Foreigners and Borders.

		<p>find a solution nearby, as well as consular authorities/embassies. In case the authority cannot find a response through these means in a neighbouring area, the Directorate General Justice Administration (<i>Direção Geral da Administração da Justiça</i>, DGAJ) is contacted to try to find a suitable interpreter in farther parts of the country³¹.</p> <p>These lists of interpreters are informal, the only requirement is that these are sworn interpreters³², both judicial authorities and criminal police authorities can accept oath, according to article 91 (3) of the CPP. Interpreters are sworn for each time they provide their services but they do not need to repeat it if within the same stage of the proceedings, as established in article 91 (5) of the CPP.</p>
1.3	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no interpretation is needed? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>As mentioned above in 1.1.1 d), the defendant can raise voidance of an act in case of failure to appoint an interpreter, as established in article 120 (2) c) of the CPP. Thus, whenever a defendant does not fully understand the language he/she or his or her legal counsel can always plead nullity of a hearing/questioning that took place without the presence of one. The timeframe to do so is the act itself, according to article 120 (3) a) of the CPP.</p> <p>However, in the absence of a legal counsel, voidance for lack of interpretation can be raised within the regular timeframe for voidances that can be remedied, which is to say 10 days (article 105 (1) of the CPP), counting from the notice of any following act of the proceeding or any subsequent participation in the proceeding³³. The presence of a legal counsel is mandatory in every procedural act (except holding of someone as a defendant) whenever the defendant does not fully understand the Portuguese language, and failure to provide one constitutes voidance that cannot be remedied (article 119 (1) c) of the CPP <i>ex vi</i> article 64 (1) d) of the CPP). The underlying principle is that the lack of knowledge of the language will jeopardise the defendant's defence due to his or her lack of understanding of the language, and therefore serious difficulties in communication, and lack of technical knowledge on the Portuguese legal system. The absence of a legal counsel would</p>

³¹ Portugal, representative of the General Prosecutor Office.

³² The terms of oath are established in article 91 (2) of the CPP and consists of the following: "I swear, on my own honour, to accurately fulfil the tasks I am hereby trusted with" (*Comprometo-me, por minha honra, a desempenhar fielmente as funções que me são confiadas*). This is not applicable when the interpreters are staff of the police forces, as happens with the PJ, as established on article 91 (6) b) of the CPP.

³³ Portugal, Court of Appeal of Guimarães (*Tribunal da Relação de Guimarães*), Guimarães/Case 936/13.9PBRRG.G1, of the 21st of October 2013. Available at: www.dgsi.pt/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/4a01c4388d92c8b880257c2a004ce71f?OpenDocument.

		<p>insofar limit the defendant's knowledge of the possibility of pleading avoidance on the basis of failure to designate an interpreter to assist him/her.</p> <p>Another important aspect is that the legal counsel has to be aware of the facts leading to an illegality. This means that, for instance in a case where the legal counsel is nominated by the court (under legal aid) to assist the defendant on a trial hearing and did not have the possibility to contact with the defendant prior or know the elements of the proceeding in advance, the avoidance can still be pleaded in appeal to the final sentence³⁴.</p> <p>In the case of police questioning, the act of holding someone defendant needs to be validated by the judicial authority (public prosecutor or judge of instruction, depending on the case), as established in article 58 (3) of the CPP, and police questioning will also be confirmed by the public prosecutor, who holds the competence of leading the investigation stage, as every act undertaken by the criminal police authority in an investigation is subject to confirmation of its validity according to their legality and adequateness (article 263 (2) of the CPP).</p>
1.4	With regard to remote interpretation via communication technologies :	
	a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?	<p>According to DGAJ, videoconferencing technology is available in all courts throughout the country and can be used for long-distance interpretation purposes³⁵. Only videoconferencing interpretation where the interpreter is co-located with the remote person is used, it is considered by practitioners that correct interpretation requires that the interpreter is present in the same room as the person heard and is observed in the court room where the judge sits through the videoconferencing system. There are no provisions specifically addressing videoconferencing for the concrete purposes of remote interpretation. In practice this means that the person heard and the interpreter will be in a court room different than that where the hearing takes place but where</p>

³⁴ Such is the understanding of the above mentioned provisions under relevant recent case law. Portugal, Court of Appeal of Évora (*Tribunal da Relação de Évora*), Évora/Case128/12.4GTABF.E1 of the 8th of January 2013. Available at: www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/9b26fa354d6e68fb80257de10056fa1f?OpenDocument.

³⁵ Portugal, representative of the Directorate General Justice Administration.

	<p>a judge or a court staff can confirm the legitimacy of the videoconferencing. Videoconferencing is thus not used for remote interpretation when the interpreter is remotely located.</p> <p>Videoconferencing is used in court but it is not legally established for the investigation stage, only the subsequent stages of the proceedings, but it has been used by some public prosecutors³⁶. The police, however, does not own such technology for police interrogation³⁷.</p> <p>However, during trial only witnesses, expert witnesses, civil parties and “assistants” can be heard in court through this means and in exceptional circumstances, as established in article 318 (1) of the CPP, but the use of this system is nowadays common. This possibility is however barred to defendants during trial, because the duty of presence in trial is also a right to be present in a court hearing. For other needed hearings throughout the proceedings (and insofar as the distance of the defendant does not collide with his or her fundamental rights) it is possible but there is no specific legal provision for it within criminal procedural law.</p>
<p>b) Which technologies are used, if any (videoconference, telephone, internet, etc.)</p>	<p>The technologies used in court are videoconferencing and teleconferencing. Criminal police authorities normally do not own such equipment. It is not impossible to resort to internet tools within some criminal police authorities but it appears to be a mere theoretical hypothesis.</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</p>	

³⁶ Portugal, representatives of the General Inspection of the Internal Affairs and the General Prosecution Office.

³⁷ We could not find any indication in literature and the interviews revealed that it is in fact unknown to the institutions and practitioners contacted.

	organisations and/or practitioners.			
	TRAINING³⁸	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.		No	<p>In answering CESIS queries regarding this study, DGAJ replied that the training of court staff includes the topic of interpretation and translation in a judicial context and that therefore the training materials used contain information on this subject³⁹.</p> <p>The General Prosecution Office clarified CESIS that training on this matter is included in the generic mandatory training on criminal procedure, it is one of the topics of interest that can be addressed⁴⁰. However, the plan of studies for the Judicial Training Centre (<i>Centro de Estudos Judiciários - CEJ</i>) for 2014/2015⁴¹ indicates that training on this particular matter is of a legal approach, potentially including the understanding of how to guarantee the right to interpretation and translation, but it does not seem to include a practical dimension in the sense of focusing on efficient and effective communication. Lectures of English language are also part of the programme⁴².</p> <p>The Judiciary Police informed CESIS that its initial training on criminal procedural law includes information on the legal aspects of the right to interpretation and right to translation under Portuguese Law and it also entails, in its more practical module,</p>

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

³⁹ Portugal, representative of the Directorate General Justice Administration.

⁴⁰ Portugal, representative of the General Prosecution Office.

⁴¹ Providing training to public prosecutors and judges.

⁴² Centro de Estudos Judiciários (2014), *Plano de Estudos – 31º Curso de Formação (TJ); 3.º Curso de Formação (TAF)*, Lisboa, pp. 40-48. Available at www.cej.mj.pt/cej/conheca-cej/fich-pdf/docs-pub-legal/2014/Plano_Estudos_2014_2015.pdf, accessed on the 27th of April 2015.

			<p>training on practical aspects of the guarantee of this right through simulation of situations. Lectures of English language are also provided.⁴³</p> <p>The National Republican Guard in response to CESIS queries for the purposes of this study informed that there is no specific training to ensure efficient and effective communication. However, in the specialised training sessions on criminal investigation courses the right to interpretation and translation is one of the topics addressed in lectures about criminal procedural law. It therefore addresses the legal aspects and the practical procedures to follow.⁴⁴</p> <p>The Public Security Police (PSP) informed CESIS that training is provided as part of the general course in lectures on criminal procedural law and of criminal investigation. In the specific training for criminal investigation police officers this topic is addressed more in depth and there it includes also methods and techniques of police questioning, where the manner in which to communicate with different actors is highlighted, and that includes communication with the help of an interpreter.⁴⁵</p> <p>The Service for Foreigners and Borders (SEF) informed CESIS that the training provided by SEF is multi disciplinary, varied and with a theoretical and practical component always present, and that this topic is addressed. The representative added that any legislative reform causes the adaptation of internal procedures and guidelines, as well as updates to existent templates (such as the documents given to defendants)⁴⁶.</p> <p>The Portuguese Bar Association clarified⁴⁷ that initial training includes information on the legal aspects related to the right to interpretation and translation within criminal proceedings. However, there is no mandatory training on the particularities of communicating with the assistance of an interpreter.</p>
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⁴³ Portugal, representative of the Judiciary Police.

⁴⁴ Portugal, representative of the National Republican Guard.

⁴⁵ Portugal, representative of the Public Security Police .

⁴⁶ Portugal, representative of the Service for Foreigners and Borders.

⁴⁷ Portugal, representative of the Portuguese Bar Association.

2.	RIGHT TRANSLATION DOCUMENTS ⁴⁸	TO OF	Brief Description
2.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners</p>		
2.1.1	<ul style="list-style-type: none"> • police questioning; 		<p>a) Article 92 (6) of the CPP establishes that an interpreter shall be nominated whenever necessary to translate documents in a foreign language non accompanied by a certified translation into the language of the proceedings (Portuguese language). Thus, the interests of the court are at stake in what concerns translation of documents, and not those of the defendant. Nonetheless, reading article 92 (6) together with article 92 (2) and having in mind the Constitutional right to a fair trial and equitable defence (article 32 of the Portuguese Constitution), that entails that the right to information is fulfilled only upon actual full understanding of the information provided, and insofar the translation of all essential documents is a legal obligation also under national law.</p>

⁴⁸ See in particular Articles 3 and 4 and relevant recitals of Directive 2010/64/EU.

		<p>There is case law⁴⁹ establishing this principle but on the basis of the European Convention on Human Rights (directly applicable before ordinary legislation as established in article 8 (2) of the Portuguese Constitution) and case law of the European Court of Human Rights, and not based on national law⁵⁰. This case law further established that written translation shall be mandatory to all essential documents listed within article 113 (10) of the CPP. This means all documents subject to personal written notice to the defendant. The case law implies that all documents that ought to be handed in in writing to any defendant are of mandatory written translation, others of necessary understanding by the defendant in the course of any hearing might be translated orally.</p> <p>Essential documents before and during the investigation stage (regardless if translated in writing or orally) are: record of object apprehension (article 183 of the CPP), act of being held as a defendant (article 58 (4) of the CPP), statement of identity and residence (article 196 (1) of the CPP <i>ex vi</i> article 113 (10) of the CPP), decision imposing a coercive measure, which includes preventive detention and pre-trial house arrest (article 113 (10) of the CPP), notice of request of civil claim (article 78 of the CPP <i>ex vi</i> article 113 (10) of the CPP), notice of the accusation against the defendant (article 113 (10) of the CPP). All other documents that relate to granting of rights and communication of duties are also of mandatory information to the defendant and in so far of necessary translation⁵¹.</p> <p>Also the report of the procedural act (<i>auto</i>) should be considered an essential document (article 99 of the CPP), as it identifies the people who participated in the procedural act and states the exact terms in which the act was developed (information provided, declarations of the participants,</p>
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⁴⁹ Portugal, Court of Appeal of Évora (*Tribunal da Relação de Évora*), Évora/Case331/08-1 of the 1st of April 2008. Available at: www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/8126ea4a122ce85080257de100574c54?OpenDocument. This decision was also referred in the Directorate General Justice Policy's (*Direção Geral de Política de Justiça* - DGPJ) legal opinion on the legislative needs for the transposition of Directive 2010/64/EU. This particular case law was highlighted to sustain the position that translation, and not only interpretation, was already guaranteed in Portuguese law. The consultation of the referred Opinion was allowed and facilitated by DGPJ at CESIS' request for the purposes of this study. This information was received on the 14th of May.

⁵⁰ Jerónimo, P., (2013) "A Directiva 2010/64/UE e a garantia de uma assistência linguística de qualidade em processo penal : implicações para a ordem jurídica portuguesa". In *Estudos Comemorativos dos 20 anos da Licenciatura em Direito da Escola de Direito da Universidade do Minho*. Braga, Escola de Direito da Universidade do Minho, p.21, available at: repositorium.sdum.uminho.pt/bitstream/1822/27488/4/JER%C3%93NIMO.%20P..%20Int%C3%A9rprete%20e%20Tradutor%20Ajuramentado%20Final%20pdf.pdf.

⁵¹ Portugal, representative of the General Prosecutor Office.

		<p>etc) and it needs to be signed by the participants, declaring they confirm that what is written in this document is truthful. This document, however, is only translated orally. It should be signed by the interpreter as well.</p>
		<p>b) The costs with translation are borne in the same terms as mentioned above for interpretation, as there is no distinction in the law between translation and interpretation in criminal proceedings, the interpreter nominated for a given procedural act will also work as a translator for these purposes if it is needed. Furthermore, the law also does not differentiate between translation and retroversion, therefore the interpreter designated will do both if needed.⁵².</p> <p>Costs for translation will enter court fees calculations and payment will be ensured by IGFEJ. The amount established in table iv as fixed amount of payment for written translation is of 1/3777 accounting unit, which is equivalent to 0,027 cents per word. According to information provided by the interpreter interviewed for the purposes of this study⁵³, this is equivalent to around 1/5 of the regular market practices.</p> <p>However, there are already translated templates for some of these documents, all bilingual (Portuguese and the language it was translated into). The act of holding someone as a defendant, for example, is already translated into several languages, within the services of the Public Prosecution (at least 8 different languages), SEF (at least 9 different languages), PJ (9 different languages), GNR (at least 6 different languages) and PSP (16 different languages). These templates are available in an internal databases for the police forces which have such systems available nationwide, as well as for the public prosecutors, who also have an online database system available. GNR, however, does not have such a system available nationwide yet. Forms were distributed among the units to guarantee it reached the whole country. According to IGAI in response to CESIS queries⁵⁴, a database with such templates was created having in mind the needs that were predicted to arise during the European Champions League which took place in Portugal in 2004⁵⁵.</p>

⁵² Portugal, lawyer and interpreter.

⁵³ Portugal, interpreter.

⁵⁴ Portugal, representative of the General Inspection of the Internal Affairs.

⁵⁵ Portugal, representative of the General Prosecutor Office.

In case of need further translation will be made by a nominated translator. This translation is usually made orally and not in writing, registering in the report that such a translation was provided, with signature of the interpreter attesting this translation was provided.

A report by IGAI dated of 2012⁵⁶ reveals that 8 out of 36 GNR offices visited by the IGAI inspectors did not provide for translated forms, namely forms of the act of holding someone as a defendant and the identity and residence report. In response to the CESIS queries, IGAI revealed that efforts have been undertaken by GNR to guarantee availability of such forms nationwide and in the experience of the inspector interviewed these were available at every police station inspected (of all police forces that fall under the spectre of IGAI's inspection powers – police forces under the oversight of the Ministry of Internal Affairs).

IGAI's inspections however analyse the availability of such forms, and not their actual provision. According to the Portuguese Bar Association forms are always delivered to the defendants and interpreters designated to proceed to interpretation during the act of being hold as a defendant. But often these forms stating the rights and duties of the defendant are not translated in writing, these are handed in in Portuguese and then orally translated. Sagel-Grande, in a research conducted to Portuguese prisons⁵⁷, concluded in the same lines, with respondents to the questionnaire mentioning receiving only oral translation of their rights. The study also concludes that defendants were either not provided with information on their rights at all or with no further explanation on how to exercise them (Sagel-Grande:2012, pp.591). However, all criminal police authorities provide guidelines for these translated forms to be used by their officers in their training programmes.

c) There is no timeframe legally established for written translations. Most of the documents the police has to provide are already translated because of the existence of these templates. When translation is needed it will normally be done by the public prosecutor, who has to confirm the

⁵⁶ IGAI (2013), *Relatório Global 2012 (Síntese) – Inspeções Sem Pré Aviso A Postos da GNR e Esquadras da PSP*, available at: www.igai.pt/Atividade/Processos/Documents/Relatorio%20Global%20Ano%202012_Sintese%20-%20Inspe%C3%A7%C3%B5es%20sem%20aviso%20pr%C3%A9vio%20a%20postos%20da%20GNR%20e%20esquadras%20da%20PSP.pdf.

⁵⁷ Sagel-Grande, I. (2012) 'Alemães, ingleses, franceses e holandeses em prisões portuguesas e holandesas', *Scientia Iuridica*, tomo LXI, No. 330. The conclusions of this study were based on responses to a questionnaire by 68 people and the questionnaire was applied to 18 respondents in 2006/2007 and to the remaining in November 2009.

		<p>procedures undertaken by the criminal police authority. The report of the questioning is translated orally by the interpreter on site.</p>
<p>2.1.2</p>	<ul style="list-style-type: none"> • court hearings; 	<p>a) All documents that shall be personally served to the defendant are foreseen as of mandatory translation (Art. 113 (10) of the CPP)⁵⁸.</p> <p>Prior to a court hearing, and consisting of an essential document, is the notice indicating date and time of trial. This is of personal notice to the defendant and shall therefore be translated into the language he or she understands (article 113 (10) of the CPP).</p> <p>Also of mandatory translation by force of the same legal provision is the final sentence. Reading the sentence in court comprises its notice to the parties (article 372 (4) of the CPP). If the sentence is very lengthy the reasoning can be summarised for reading purposes. However, at least the summary needs to be fully read, otherwise the sentence will be null (article 372 (3) of the CPP). The sentence shall nonetheless be deposited within the court secretariat and a copy can be provided to the parties if they so request (article 372 (5) of the CPP). If the defendant is absent but his or her legal counsel is present, the defendant is considered served (article 373 (3) of the CPP).</p> <p>The General Prosecutor Office in response to CESIS queries⁵⁹, and regarding documents not determined as of personal notice to the defendant, further mentioned that all documents that are not of mandatory notice to the defendant are not of mandatory written translation and it is therefore not the duty of the court to order it.</p> <p>According to Immigrant Solidarity (<i>Solidariedade Imigrante, SOLIM</i>)⁶⁰, in their practical experience with migrants who are defendants in criminal proceedings, notices to defendants were always made in Portuguese language and, at best, oral translation would be provided, frequently to a language that was not the native one of the defendant.</p> <p>b) The costs with translation of documents are paid in the same terms as mentioned above for interpretation, since there is no distinction in the law between translation and interpretation in</p>

⁵⁸ Ramos, V. C. (2014) 'Usar o direito europeu na prática processual penal', *Boletim da Ordem dos Advogados*, No. 120/121, November/December, pp. 44.

⁵⁹ Portugal, representative of the General Prosecution Office.

⁶⁰ Portugal, representative of [Immigrant Solidarity](#) (a national non-profit organisation that promotes the rights of migrants in Portugal since 2001).

		<p>criminal proceedings. It will therefore enter court fees calculations and payment will be ensured by IGFEJ.</p> <p>c) There is no timeframe legally established. However, according to information provided by the General Prosecutor Office, the judge sets a timeframe that usually shall not exceed 30 days in cases of greater complexity⁶¹. The translator can nonetheless ask for a prorogation of this time presenting reasoning for such a request. In case of excessive delay in presenting the translation the translator shall be removed from his or her task and another translator will be designated, as established in article 153 (3) of the CPP ex vi article 92 (8) of the CPP.</p>
2.1.3	<ul style="list-style-type: none"> any necessary interim hearings; 	<p>a) The accusation, as well as the decision by the examining magistrate in the instruction stage confirming the accusation (if there is such a stage in the specific proceedings), the civil damages claim and the decision that orders a coercive measure (includes both non-custodial and custodial measures, such as pre-trial detention) are of mandatory translation, following what has been said (according to article 113 (10) of the CPP).</p> <p>b) In the same terms as has been mentioned prior, the costs with translation of documents are paid in the same terms as mentioned above for interpretation, since there is no distinction in the law between translation and interpretation in criminal proceedings. It will therefore enter court fees calculations and payment will be ensured by IGFEJ.</p> <p>c) There is no timeframe legally established for written translations. The public prosecutor or examining magistrate establishes a timeframe for the specific case at hands, that normally shall not surpass 30 days for the cases of greater complexity of the translation required⁶².</p>
2.1.4	<ul style="list-style-type: none"> any communication between suspects and accused persons and their legal counsel in direct 	<p>a) There is no legal provision explicitly determining which documents are of essential translation and which are not and who has the responsibility to provide it and therefore bears the costs. Under the current interpretation of the legal provisions in force, translation of all documents that are not of personal notice to the defendant but are deemed important for the defence can be requested. The court will decide upon the evaluation of the actual need for an equitable defence. Ramos is of the opinion that “other documents that could be included</p>

⁶¹ Portugal, representative of the General Prosecution Office.

⁶² Portugal, representative of the General Prosecution Office.

	<p>connection with any questioning or hearing during the proceedings?</p>	<p>are the evidence that form the basis of the allegation, as these fall within the Directive's objective and are also considered by the CPP to be essential to defence; reference to which must be included in the allegation, under penalty of nullity (art. 283, no. 3 d) to f) of the CPP)" (Ramos:2014, pp.4). According to the General Prosecution Office, if there is a need to confront the defendant with a given document, oral translation will be provided for during the hearing. Nonetheless, if written translation is deemed necessary for better analysis for defence the defendant or his or her legal counsel can request it. The Lawyers' Bar Association is of the opinion that the whole proceedings should be translated and that that is the only interpretation in line with the guarantee of the rights of a defendant who does not understand the language of the proceedings with those of a defendant who does.</p> <p>b) According to the General Prosecution Office, these costs for translating in writing documents that are not included in article 113 (10) of the CPP shall be borne by the defendant. The Lawyer's Bar Association is not of the same understanding and thinks these should be requested by the legal counsel (and often are not, as usually lawyers translate the documents themselves to the defendant). Therefore costs should be borne by the court.</p> <p>Since there is no distinction in the law between an interpreter and a translator, one could read article 92 (3) of the CPP as entailing that the designation of an interpreter for the purposes of communication between the defendant and the legal counsel would proceed with translation of these documents as well.</p> <p>c) There is no timeframe legally established but it shall be the provided in reasonable time to prepare the hearing or questioning.</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</p>	<p>The Évora Court of Appeal has made it very clear in its ruling of the 1st of April of 2008 that all personal notices to the defendant (and not only to his or her legal counsel) need to be translated in writing, considering they are also provided in writing to a defendant that understands the language of the proceedings. The documents of personal notice to the defendant are, as mentioned in section 2.1, the decision imposing a coercive measure, which includes preventive detention and pre-trial house arrest, notice of request of civil claim, notice of the accusation against the defendant, notice of the decision on the instruction phase, notice of date and place of the court hearing, notice of the sentence. The decision of this Appeal court highlights that <i>"a foreign citizen that does not comprehend the Portuguese language shall be served in the same terms a citizen that understands the language is, personal and in writing. And this written notice will only be effective if it is translated,</i></p>

<p>desk research by consulting relevant organisations and/or practitioners.</p>	<p><i>not only through the possibility of providing for interpretation in this matter. In fact, it would be useless to make a copy of the written act available if this is not fully comprehensible to the defendant. In other words, in a language the defendant understands”.</i>⁶³</p> <p>However this position is not consensual within the courts. There is a jurisprudence trend⁶⁴ to consider that oral translation of the sentence is enough to ensure a defendant’s right to defence. For instance, the Oporto Court of a Appeal, in a decision dated of the 11th of June of 2014, clearly stated that <i>“The law does not comprise in any provision for a translated copy of the sentence to be delivered to the defendant. Furthermore, reading of the sentence [in trial] consists of its notice, and therefore the legal obligation is of oral translation of the sentence read [and as it is read] made by the interpreter”.</i></p> <p>The Constitutional Court, in 2014, also considered that no written translation of personal notice to the defendant is of mandatory written nature⁶⁵.</p> <p>The lawyers interviewed for this study⁶⁶ do not share the same opinion. In fact, clarity in the law is still deemed necessary to cast away doubts in courts’ practice on this matter and tackle the problems felt in practice.</p> <p>Neves defends that the distinction between the documents that shall be translated in writing and those that can be so solely orally depends on effects of the acts at stake. The author highlights the</p>
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⁶³ Portugal, Évora Court of Appeal (*Tribunal da Relação de Évora*), Évora/Case331/08-1 of the 1st of April 2008. Available in: www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/8126ea4a122ce85080257de100574c54?OpenDocument.

⁶⁴ Most case law consulted for the purposes of this research do not consider notices under article 113 (10) of mandatory written translation, allowing for oral translation of such documents that are considered of necessary translation: Portugal, Court of Appeal of Évora (*Tribunal da Relação de Évora*), Évora/Case128/12.4GTABF.E1 of the 8th of January 2013. Available at: www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/9b26fa354d6e68fb80257de10056fa1f?OpenDocument; Portugal, Oporto Court of Appeal (*Tribunal da Relação do Porto*), Porto/Case98/12.9P6PRT.P1 of the 11th of June 2014, available at: www.dgsi.pt/jtrp.nsf/56a6e7121657f91e80257cda00381fdf/143bdae4b954d31880257d0e0055d85b?OpenDocument; Portugal, Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*), Lisboa/Case0045483 of the 1st of July of 1998, available at: www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/10f5dbfcb3f11df8025680300054c15?OpenDocument; Portugal, Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*), Lisboa/Case00114783 of the 24th of January 2001, available at: www.dgsi.pt/jtrl.nsf/33182fc732316039802565fa00497eec/54bf4981f1c6b36b80256a37002f6667?OpenDocument; Portugal, Lisbon Court of Appeal (*Tribunal da Relação de Lisboa*), Lisboa/Case061638 of the 4th of April 2006.

⁶⁵ Portugal, Constitutional Court (Tribunal Constitucional), Lisboa/201/14/Case201/14, of the 15 of October 2014. Available at: www.tribunalconstitucional.pt/tc/acordaos/20140682.html.

⁶⁶ Portugal, lawyer and representative of the Portuguese Bar Association.

	<p>difference between the mandatory personal notices under article 113 (10) of the CPP and other relevant documents of compulsory notice only to the defendant's legal counsel. Among the former some can be served orally, such as the instruction decision, as set in article 307 (1) of the CPP, and the sentence, as established in article 373 of the CPP, but the author highlights that the written version is made available within the court secretariat. The author argues for the need of written translation of all these documents considering that these are of particular importance to ensure the defendant's defence and therefore only by consulting them in writing thoroughly will the right to a fair trial be guaranteed. The author reminds that a copy provided in a language that the defendant does not understand (it is a legal obligation to provide a copy) and a mere oral translation are not sufficient to identify elements that can make him or her decide if there are facts or legal aspects that he or she disagrees with. This is namely of importance when regarding the accusation, as upon its notice the defendant has one last opportunity to challenge that decision before going to trial by requesting that the instruction stage is opened to re-analyse the facts in the accusation. This request has a timeframe of 20 days counting from notice and it does not suspend the proceedings nor does it allow for any deferral (Neves, 2011: 157-158).⁶⁷</p> <p>Regarding other documents also entailed in article 113 (10) of the CCP, considering for instance that the decision ordering a coercive measure, this decision is imposed in a first judicial hearing is given orally and registered through a report (<i>auto</i>), as established in article 96 (4) of the CPP, written translation is not mandatory, instead oral translation is made in the moment. That is the interpretation made by the General Prosecution Office of the legal provisions of interest. Neves, however, suggests that such an understanding would not adequately ensure the defendants right to defence. Therefore the author argues that, in spite of this being a decision verbally served and in so far orally translated, the defendant has the right to know in detail of the facts that, for instance, determine his or her pre-trial detention and consequently this decision should also be of mandatory written translation (Neves, 2011: 158)⁶⁸. The same author considers that translation of notice shall include the translation of all elements and copies of the documents needed to fully understand its content (article 228 (2) of the Code of Civil Proceedings <i>ex vi</i> article 4 of the CPP) and consequently all documents to which a decision refers to need to be translated in writing as well⁶⁹.</p>
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⁶⁷ Neves, A. C., (2011) *Os Direitos do Estrangeiro – Respeitar os Direitos do Homem*, Teses:36, Lisboa, Alto Comissariado para a Imigração e Diálogo Intercultural, I.P, pp.157-158, available at: www.oi.acidi.gov.pt/docs/Colec_Teses/Tese36_WEB.pdf.

⁶⁸ Ibidem, pp. 158.

⁶⁹ Ibidem, pp. 155.

		<p>The criteria to determine if there will be written or solely oral translation seems to be whether or not knowledge of a certain document can be provided orally to the defendant. But for instance the judicial sentence is provided both in writing and orally. For defendants who speak the language the sentence (or its summary) is read in Court but it is also provided in writing and it is from the moment it is deposited in the court secretariat that the timeframe for appeal starts counting. Therefore, it seems reasonable to consider that although notice is made through oral translation in court to the defendant and that notices him or her of the decision, the written translation is still demanded and it is from the moment that translated document is available to the defendant that the timeframe for appeal starts counting. The Portuguese State has already been convicted by the European Court of Human Rights for violation of article 6 (1) and (3) c) of the European Convention on Human Rights for denial of legal assistance and access to the Supreme Court due to counting the timeframe for appeal from the moment the defendant was formally served in Portuguese and not the moment when the translated Appeal Court sentence was made available⁷⁰.</p> <p>The judge of the Appeal Court interviewed for the purposes of this study⁷¹ is of the opinion that by default all documents within article 113 (10) of the CPP of personal notice to the defendant shall be translated in writing, but they can be translated merely orally if in the concrete situation the simplicity of the decision so allows without putting in jeopardy the defendant's right to ample defence. But this can only be analysed in the case itself as some documents of more simple content can in the circumstances of the case still imply the need for written translation, and sentences should always be provided in writing, except in case of acquittal (in which case the defendant can, of course, still request its written translation but the court is not obliged to provide for it of its own motion).</p> <p>A best practice that can be presented is that of the Lisbon's Criminal Investigation Department of the Public Prosecution, where there are internal guidelines that demand that even if only oral translation is provided first, the timeframe only starts counting from the moment of provision of written translation⁷².</p>
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⁷⁰ European Court of Human Rights (EctHR), *Panasenko v. Portugal*, No. 10418/03, 22 July 2008.

⁷¹ Portugal, representative of the Appeal Court.

⁷² Portugal, representatives of the Lisbon Criminal Investigation Department of the Public Prosecution.

2.3	Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no translation is needed? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.	The defect of lack of translation of documents is not legally established in the CPP. However, the understanding is that this is equivalent to failure to appoint an interpreter and therefore considered voidance that can be remedied under article 120 (2) c) and (3) of the CPP ⁷³ .		
		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?	Yes		<p>The CPP does not have any specific provision demanding so, however that is the direct consequence of the terms of article 92.</p> <p>Article 92 of the CPP reads as follows:</p> <p><i>Article 92</i></p> <p><i>1 – Procedural acts, both oral and in writing, shall be in Portuguese, if not these shall be deemed null.</i></p> <p><i>2 – When a person that does not know or fully understand the Portuguese language has to intervene in the proceedings, a suitable interpreter shall be appointed, free of charge, even if the authority presiding the act or any other person intervening understands the language spoken.</i></p>

⁷³ Ramos, V. C. (2014) 'Usar o direito europeu na prática processual penal', in *Boletim da Ordem dos Advogados*, No. 120/121, November/December, pp. 45.

			<p>3 – <i>The defendant can choose, free of charge, an interpreter different from the one in the number prior to translate the communications between him or her and his or her legal counsel.</i></p> <p>4 – <i>The interpreter is bound by proceedings secrecy, in general terms, and cannot reveal conversations between the defendant and his/her legal counsel in any stage of the proceedings, otherwise the interpreter is violating professional secrecy.</i></p> <p>5 – <i>Proof obtained in violation of numbers 3 and 4 cannot be used in court.</i></p> <p>6 – <i>An interpreter shall also be appointed when it is necessary to translate a document in a foreign language and without any certified translation.</i></p> <p>7 – <i>The interpreter is appointed by a judicial authority or criminal police authority.</i></p> <p>8 – <i>To the profession of interpreter is applicable the regime set in articles 153 and 162 [experts].</i></p> <p>In practice this tends to be the case. Some templates are translated and for other documents oral translation is provided by an appointed interpreter (for instance, written records of the hearings and questionings). Many, however, are not translated in writing but orally by the interpreter present, and these documents will be signed by the authority, the defendant and the interpreter. However, Sagel-Grande concluded that defendants frequently sign documents that are written in Portuguese without translation into the defendant’s native language or another language they understand. In her study, 59% of the respondents replied that they signed documents they did not understand (Sagel-Grande:2012)⁷⁴. SOLIM revealed the exact same experience in the field, in terms of written translation, but mentioned that oral translation is sometimes provided. However, translation seems to be rarely available (even orally) when we talk about migrants coming from African Portuguese speaking countries, even though these</p>
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⁷⁴ Sagel-Grande, I. (2012) ‘Alemães, ingleses, franceses e holandeses em prisões portuguesas e holandesas’, *Scientia Iuridica*, tomo LXI, no. 330. It is however important to note the size of the sample, as the conclusions of this study were based on responses to a questionnaire by 68 foreign citizens in Portuguese prisons. Also to bear in mind is the date of the data collection, as the questionnaire was applied to 18 respondents in 2006/2007 and to the remaining in November 2009.

			migrants mostly do not understand Portuguese fully. Also, when talking about other non-Portuguese speaking nationalities, translation is frequently made to a second language, not a native one. ⁷⁵ .
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?	Yes	The CPP establishes in its article 120 (2) c) and (3) a), c) e d)) that the lack of designation of an interpreter, when mandatory by force of a legal provision, amounts to nullity that demands being pleaded, which should be made within the timeframe legally provided for. Article 121 (1) a) entails that, except when the law says otherwise, a voidance will be annulled if procedural participants refuse to explicitly plead them or have accepted the effects of the void act. Joining these two provisions one can conclude that it is possible to waive the right to translation of documents. The explicit waive of such right shall be made in writing. But that is not the case when the voidance is not pleaded within the legal timeframe. The same cannot apply if the defendant is not given the chance to choose a different interpreter for his or her communications with his or her legal counsel or if the interpreter violates investigation secrecy or reveal conversations between the defendant and his or her legal counsel, regardless of the stage the proceedings is in (article 92 (4) of the CPP). In these two cases, article 92 (4) establishes that no evidence can be used in breach of these rights. These are therefore annulable voidances and the act is therefore null, as well as all others dependent upon it and those that can affect it (article 122 (1) of the CPP).

⁷⁵ Portugal, representative of Immigrant Solidarity.

3.	RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION⁷⁶			
3.1	With regard to use of registers of interpreters and translators in EU Member States:	Yes	No	Brief Description
	a) Do national databases or registers exist for legal translators and interpreters?		No	Within courts, there is currently no national database for legal translators and legal interpreters. The selection of interpreters and translators is made by personal contacts ⁷⁷ of the court staff, the public prosecutors and police officers, in exchanging information, in an ad hoc manner ⁷⁸ . In some districts these contacts were organised in small lists created locally, within each court, and the interpreters and translators there listed, according to information provided by DGAJ ⁷⁹ , are professionals indicated by the embassies. The interpreters available are mainly for main languages (such as French, English, Spanish, German) and there is a lack of resources in languages that are frequently needed and that have less professionals available in the country (for instance, some latin American languages, asian languages, african languages and even Eastern European languages) ⁸⁰ . Some specialised police forces do have their own informal lists, such is the case of SEF and PJ. When interpretation or translation for other languages is required other criminal police authorities (PJ and PSP) resort to the lists SEF has. In the event of need of a language that is not included in the SEF lists, embassies will be contacted. GNR further mentioned resorting to ACM interpreters' database (note that these are not necessarily legal translators and legal

⁷⁶ See in particular Article 5 and relevant recitals of Directive 2010/64/EU.

⁷⁷ Not that these are personal acquaintances of their private lives but instead due to the fact that they have already worked with such interpreters prior or received indication of their name and contact by the embassies.

⁷⁸ Portugal, representative of the General Prosecution Office.

⁷⁹ Portugal, representative of the Directorate General Justice Administration.

⁸⁰ Portugal, interpreter.

			<p>interpreters). Courts usually resort to interpreters/translators they have personal knowledge of or the police has knowledge of locally and in the neighbouring regions and for the rare languages the ones indicated by the relevant embassies or by DGAJ (that contacts other courts in search for a suitable interpreter on the specific language at need). These are in fact the interpreters and translators included in the local lists when they exist. The General Secretariat of the Ministry of Justice⁸¹ is however currently working on developing a national database to be used by the courts, in the different areas of law. In fact, a circular of 2013⁸² of the DGAJ aimed at all court staff asked for information on how courts find suitable interpreters, including a demand on information on the lists locally created when they so exist (a questionnaire was annexed to the circular and questions on procedures of selection of interpreters included).</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>	No	<p>These lists are not official and there are no requirements for an interpreter or translator to be included in such lists other than being sworn interpreters or translators (as established in article 91, paragraph 2 of the CPP). Also the law does not distinguish between interpreters and translators, as it was thought for needs of interpretation while intervening in procedural acts (when heard by an authority).</p> <p>These are informal lists and not every court has one, therefore it is also not mandatory to be a part of it to operate as a judicial interpreter or judicial translator. These lists include both professional translators and interpreters as well as amateurs⁸³.</p> <p>Both the PJ and the SEF mentioned that experience with these interpreters and translators has allowed for the selection of which interpreters and translators stay on</p>

⁸¹ Ibidem.

⁸² DGAJ/DSJCJI-CJI, Circular no. 31/2013 (*Ofício-Circular n.º 31/2013*), 8 July 2013. Available at www.dgaj.mj.pt/sections/files/circulares/2013/3-trimestre//sections/files/circulares/2013/3-trimestre/oc-31-2013/downloadFile/file/OC%2031-2013.pdf?nocache=1373544590.74, accessed on the 27th of April.

⁸³ Jerónimo, P. (2013), 'A Directiva 2010/64/UE e a garantia de uma assistência linguística de qualidade em processo penal : implicações para a ordem jurídica portuguesa' in: *Estudos Comemorativos dos 20 anos da Licenciatura em Direito da Escola de Direito da Universidade do Minho*, Braga, Escola de Direito da Universidade do Minho, pp. 21. Available at: repositorium.sdum.uminho.pt/bitstream/1822/27488/4/JER%C3%93NIMO,%20P.,%20Int%C3%A9rprete%20e%20Tradutor%20Ajuramentado%20Final%20pdf.pdf.

				the list, based on their behaviour when providing these services (qualifications, experience and ethical conduct).
	c) Who has access to these databases?	<p>Brief Description:</p> <p>There are no official databases but the local lists that exist within courts are of access to court staff (who usually find and contact interpreters at the request of judges), judges and public prosecutors. The police also resorts to such lists in communication with the court. The existing lists within the police, within the police forces where it so exists, are of access to the internal police personnel and in the case of SEF also of other criminal police authorities. In fact, all judicial and police practitioners involved cooperate informally to find a suitable interpreter.</p>		
	<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 are no formal requirements for translators and interpreters to work within a judicial context at the present moment. The only requirements are that these interpreters are sworn to the authority presiding the act (in the terms established in article 91 (2) of the CPP) and translations certified (which consists of a self-certification, with the translator signing the field sheet containing the translation and the notary recognises the signature⁸⁴).</p> <p>However, the interpreters included in the PJ lists have to meet minimum requirements. The interpreters and translators shall hold a Bachelor degree. These interpreters are kept in the PJ's list or not according to the information passed on on the quality of the interpretation provided, both by direct complaints by the defendants that are then referred by the PJ inspectors who receive them to the Unit (if the defendants complain during the act, it is stopped and another interpreter is nominated) or by the feedback received by the Unit from other professionals.</p> <p>It is important to note that the law does not distinguish between interpreters and translators and often interpreters designated for a given hearing will also be responsible for translating related documents if needed.</p>		

⁸⁴ Portugal, Decree-Law n.º 76-A/2006 (*Decreto-Lei n.º 76-A/2006*), 29 March 2006, available at:

www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=731&tabela=leis. In its article 38 (1) is established that this competence is not exclusive of notaries but also to registrars, as well as lawyers, legal practitioners and chambers of commerce and industry (the last three however need to register in the system created for such purposes by the Ministry of Justice).

		<p>According to the interpreter interviewed for the purposes of this study⁸⁵, there is no criterious selection of the interpreters and translators that can be listed to work in a criminal procedural context and this often leads to a lack of trust of the judicial and police authorities. There is also no knowledge of how interpretation should operate, and no training provided to judicial practitioners for that. This, according to the interpreter, has consequences on the quality of the interpretation. In fact, interpreters in Portugal either use consecutive translation technique or whispering, as simultaneous interpretation has only occurred in exceptional cases. Some new court rooms, however, are already equipped with material conditions to do so, according to information received from the Lawyer's Bar Association⁸⁶.</p> <p>All stakeholders interviewed for the purposes of this study seemed to agree that, in terms of quality of the interpretation services provided, it varies widely, from very good professional interpreters and translators, to sometimes amateurs with lack of knowledge of at least one of the languages (Portuguese or the language of the defendant), lack of technical knowledge to translate within criminal proceedings, or with a complete lack of ethical conduct. This seems to be due to a lack of regulation and criterious selection, as well as the absence of a database and unreasonable upper limits of the tables establishing payment.</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>	<p>Yes</p>	<p>Article 47 (1) of the CPP extends the legal framework of impediments, refusals and withdrawal to interpreters and translators. Accordingly, impediments to working as an interpreter or translator within the criminal proceedings are: family ties (or resulting from a civil partnership) with the defendant, victim or any other person that can become a civil party or "assistant" to the proceedings; being party to the proceedings as a public prosecutor, criminal police authority officer, expert witness, legal counsel to the defendant, the "assistant" or the civil party; or whenever heard (or ought to be heard) within the proceedings as a witness (Article 39 (1) of the CPP). The declaration of impediment and claim, as well as the claim for refusal and request of withdrawal are addressed to the court or the examining magistrate in charge of the proceeding. These judicial authorities shall decide without need of special formal requirements, as established in article 47 (2) of the CPP.</p>

⁸⁵ Portugal, interpreter.

⁸⁶ Portugal, representative of the Lawyer's Bar Association.

	f) Is access to existing databases provided through the European e-Justice portal ? ⁸⁷ How is this register available to legal counsel and relevant authorities?		No	There is no access to the local informal databases or the special police forces databases within the European e-Justice portal.
	g) Are criminal justice institutions required to use interpreters and translators listed in these registers?		No	This question is non-applicable, since there is no official national database (see reply to questions 3.1 a) and b)).
3.2	With regard to other mechanisms/procedures:	Yes	No	Brief Description
	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?		No	<p>There are no specific mechanisms or procedures to ensure the quality of the interpretation or translation.</p> <p>Article 92 (2) of the CPP establishes that the interpreter to be nominated has to be “suitable”. A suitable person is that who has the necessary qualities to provide for a certain activity, including skills, honesty and independence. However, in the absence of an actual list of official interpreters and translators and of minimum qualifications for someone to be accepted as an interpreter or translator during a proceedings, challenges might be faced with the quality of the services provided.</p> <p>The PJ inspectors have key questions they pose (and changes of phrasing) to understand if the interpretation is being rightfully provided. This means that PJ inspectors will ask the same question in different ways or pose a set of standard</p>

⁸⁷ <https://e-justice.europa.eu/home.do?plang=en&action=home>

			<p>questions to test the quality of the interpretation during a questioning where an interpreter they have no previous working experience with is assisting the defendant.</p> <p>Within courts often the judge, or the public prosecutor, or the legal counsel are able to understand that the interpretation provided is not of sufficient quality when they know the language that is being spoken. Also the defendant might raise the issue of lack of quality of a given interpretation if he or she has a little knowledge of the Portuguese language that allows him or her to identify mistakes. In such cases the interpreter shall be replaced (at least once or if there is reasonable doubt even after one first nomination of another interpreter).</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?	Yes	<p>There is no legal provision establishing the need for sufficient quality of the interpretation and translation provided in criminal proceedings. Nonetheless, there is already case law⁸⁸ establishing this principle. It is thus considered that an insufficient or poor interpretation of acts or translation of documents that ought to be communicated is equivalent to the lack of an interpreter or translator, and therefore it consists of a nullity dependent on pleading, in the terms of article 120 (2) c) of the CPP. Proving the lack of quality might however be difficult, as will be discussed in reply to 3.4.</p>
	c) Are there any mechanisms in place that allow for the replacement of the appointed interpreter or a new translation when the	Yes	<p>Regarding the independence of the interpreter or translation, as mentioned in reply to question 3.1 e), the interpreter or translator (in cases of impediment or withdrawal) and the public prosecutor, the defendant, the “assistant” or the civil party (in all cases) shall address the declaration of impediment and the request for refusal or withdrawal to the court or examining magistrate who holds the proceeding at the time the issue</p>

⁸⁸ Relevant case law: Portugal, Court of Appeal of Évora (Tribunal da Relação de Évora), Évora/Case389/11.6PALGS.E1 of the 1st of October 2013. Available at: www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/85155dd1465aa37180257de10056fc63?OpenDocument; Portugal, Court of Appeal of Évora (Tribunal da Relação de Évora), Évora/Case128/12.4GTABF.E1 of the 8th of January 2013. Available at: www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/9b26fa354d6e68fb80257de10056fa1f?OpenDocument.

	quality of the interpretation or the independence of the interpreter is considered insufficient? If yes, briefly provide information.			is raised. A decision will be immediately made and there shall be no appeal, as established in article 47 (3) of the CPP. The poor quality of a translation or interpretation can be grounds for refusal of the translator or interpreter. Article 43, paragraph 5 of the CPP further establishes that the acts in which the refused interpreter took part before a request of refusal are only voidable when there is reasoning to conclude for jeopardy of a fair decision on the proceedings. The acts he/she participated in afterwards are only valid if they cannot be repeated in due time and there is no danger to the fairness of the decision on the proceedings.
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? ⁸⁹ If yes, briefly provide information on those mechanisms considering the following vulnerable groups:			
	a) suspect or accused persons with physical impairment or disability;	Yes		Article 93 of the CPP determines that a person who is deaf or has a hearing or speech impairments shall be assisted by a suitable interpreter of sign language, lip reading or in written form, as is deemed more suitable for the situation of the person in need (it can be a defendant but also a victim, for instance). In cases of mute people who know how to write, questions will be made orally and replies written down. If that is not the case, an interpreter will be designated. The absence of an interpreter entails the re-scheduling of the hearing. The defendant in such circumstances can choose a different interpreter for conversations with his or her legal counsel, free of charge. Evidence gathered without guaranteeing this right of having a different interpreter for conversations with the legal counsel cannot be used, as well as proof obtained with

⁸⁹ See in particular recital 27 of Directive 2010/64/EU.

				<p>breach of investigation secrecy by the interpreter, or if the latter reveals conversations between the defendant and his or her legal counsel, regardless of the stage in the proceedings.</p> <p>The PJ mentioned⁹⁰ that they have a protocol with a relevant association working with and for people with disabilities to ensure suitable interpreters are found for these purposes. This protocol is exclusively made to identify interpreters who can help register in the proceedings what the defendant or other participant in the proceedings (such as the victim) want to communicate in case they are deaf or suffer from other auditive impairments. The resources widely vary within the country, therefore this good practice might not respond to needed situation in the same pace throughout the country.</p>
	b) suspect or accused persons with intellectual impairment or disability;		No	<p>We could find no special procedures regarding this matter and all police forces interviewed, as well as the National Federation of Cooperatives of Social Solidarity (<i>Federação Nacional de Cooperativas de Solidariedade Social, FENACERCI</i>)⁹¹, responded that such procedures do not exist. FENACERCI added that there are currently no mechanisms to allow for a differentiated system so that the person with intellectual impairment or disability can understand fully and express him or herself adequately. The representatives of FENACERCI added that there is no awareness of the special needs of the defendant with intellectual impairment, nor the capacity to understand their reactions or their ability to perceive (or not) the wrongfulness of the act.</p>
	c) i) children who are suspects/defendants, and/or ii) holders of	Yes		<p>For the specific purposes of the right to interpretation and translation there are no special procedures regarding the needs of children and of holders of parental responsibility. However some measures are of interest.</p>

⁹⁰ Portugal, representative of the Judicial Police.

⁹¹ Portugal, representative with FENACERCI. FENACERCI is a federation representing the cooperatives that integrate it, namely Cooperatives of Education and Rehabilitation of Maladjusted Citizens (*Cooperativas de Educação e Reabilitação de Cidadãos Inadaptados, CERCI*). It promotes equal opportunities for all citizens, promoting the quality and sustainability of the responses provided by its members, social solidarity cooperatives, and promoting the rights of the people supported by these organisations, children, youth and adults (of all ages) with disabilities and their families.

	<p>parental responsibility (please distinguish between the two).</p>		<p>Under Portuguese Law (article 19 of the Criminal Code), the age of criminal responsibility is of 16 years old, but special disciplinary measures are applicable to children aged over 16 and under 21 who have committed a crime.</p> <p>Criminal offences committed by a child between the ages of 12 and 16 years old are not criminally charged, instead children are subject to educational guardianship procedures⁹². And when a child under 12 that commits a crime is considered to be in danger, he or she can undergo promotion and protection procedures⁹³.</p> <p>Educational guardianship procedures include, for children, the right to be assisted by a legal counsel in all procedural acts he or she has to participate in, and this includes appeal⁹⁴. The right to interpretation and to translation applies in the general terms established in article 92 of the CPP, by remission of article 128 of the Law on Educational Guardianship.</p> <p>But there are several measures in place for minors under Educational Guardianship to promote a more sensitive approach and communication to the child, namely, the possibility that the hearing takes place outside of the court premises (article 96 (1) of the Law on Educational Guardianship); that all practitioners involved in the court hearing leave out their professional outfit (article 96 (2) of the Law on Educational Guardianship); the language used must be simplified during the hearing (article 99 (1) and <u>article 104</u> of the Law on Educational Guardianship); assistance of psychologists and other experts can be requested (article 99 (2) of the Law on</p>
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⁹² Portugal, Law no. 166/99, which approves the Law on Educational Guardianship (*Lei n.º 166/99, que aprova a Lei Tutelar Educativa*), 14 September 1999, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=542&tabela=leis.

⁹³ Portugal, Law no. 147/99, which approves the Law on the Protection of Children and Youth in Danger (*Lei n.º 147/99, Lei de Proteção de Crianças e Jovens em Risco*), 1 September 1999, available at:

www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=545&tabela=leis&ficha=1&pagina=1&; and respective regulation in Portugal, Decree-Law no. 12/2008, which regulates the execution regime of the promotion of the rights and of the protection of children and youth in danger, regarding the support to the parents and other family members, to the guardianship of suitable person and support to an autonomous life (*Decreto-Lei n.º 12/2008, que regulamenta o regime de execução das medidas de promoção dos direitos e de protecção das crianças e jovens em perigo, respeitantes ao apoio junto dos pais e apoio junto de outro familiar, à confiança a pessoa idónea e ao apoio para a autonomia da vida*), 17 January 2008, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1026&tabela=leis&ficha=1&pagina=1&.

⁹⁴ Article 46-A of the Law on Educational Guardianship.

			<p>Educational Guardianship); only the judge can question the child (article 107 of the Law on Educational Guardianship); the guarantee that the child shall be made feel free and with only a minimum of constraint when heard in every procedural measure (article 45 (1) of the Law on Educational Guardianship); among others.</p> <p>Regarding minors between the ages of 16 and 18 years old, it is noteworthy that anyone under the age of 21 shall be assisted by a legal counsel in every procedural act he or she intervenes, except the act of holding someone defendant, as established in article 64, paragraph 1, section d) of the CPP. The same is applicable to any person who does not fully understand the Portuguese language. Also Decree-Law 401/82⁹⁵, that in its article 4, establishes that when these defendants are to be imprisoned their penalties shall be especially diminished whenever there is reason to believe these would benefit from being reintegrated in society. According to the judge of the Court of Appeal interviewed for the purposes of this study⁹⁶, guidelines are for the judges apply this article and need for particularly strong reasoning not to.</p> <p>As far as holders of parental responsibilities are concerned, they have special information rights, but there are no special procedures for effective communication that we could find.</p>
3.4	Is there any recording procedure to note that interpretation and translation have occurred and in which form? ⁹⁷ If yes, briefly provide information on how this procedure is organised in practice.	Yes	<p>Only court hearings (article 364 (1) of the CPP) and first judicial hearing of arrested defendant (article 141 (7) of the CPP) are recorded through audio or video. Police questionings are registered in writing and signed by the defendant and interpreter as well, when one is appointed and present, but not audio or video taped. For court hearings, however, this is the preferred means and it is only possible to record in writing if there is absolutely no audio or video means available, which nowadays is very seldom the case (audio is the most common form). All other procedural acts are written and signed by its participants, including the interpreter, who shall translate orally what is written in this document at that moment so that the defendant can</p>

⁹⁵ Portugal, Decree-Law 401/82, which approves the criminal framework applicable to young offenders (*Decreto-Lei n.º 401/82, Regime penal aplicável a jovens delinquentes*), 23 September 1982, available at:

www.pgdlisboa.pt/leis/lei_mostra Estrutura.php?tabela=leis&artigo_id=226A0013&nid=226&nversao=&tabela=leis&so_miolo. This regime establishes special disciplinary measures for juvenile offenders, considering factors such as their special need for social reintegration.

⁹⁶ Portugal, judge of the Court of Appeal.

⁹⁷ See in particular Article 7 and relevant recitals of Directive 2010/64/EU.

			<p>confirm if the registry of his or her words (that were registered according to what the interpreter translated since this document is written in Portuguese language) is correct and afterwards sign the report. Whenever audio recording is not possible a linguistics expert cannot analyse if the interpretation was made accurately, with quality, or not. Also the quality of the recording varies, but it has improved significantly over the years. It is however not mandatory to record the interpretation itself of what was asked to the defendant, only of what the defendant replied, as that is not evidence, but normally it will be recorded, since the microphone is in the same because they are sitting together⁹⁸. For written translation it is obviously easier.</p> <p>All hearings and interrogations are registered, either by written or audio mechanisms, and in both cases the presence of the interpreter has to be mentioned.</p> <p>During trial all direct questions to and respective answers by the defendant are always assisted with interpretation. The rest of the hearing will be subject to interpretation or not according to the judges awareness of its importance. The judge interviewed for this study⁹⁹ is of the opinion that that shall not be the understanding in light of the existing legislation because by the end of the court hearing the defendant will always be asked if he or she wishes to add something in his or her defence and he or she needs to be aware of the evidence gathered, therefore if not a full interpretation of the testimony of a witness, its consecutive interpretation shall always be provided to the defendant.</p>
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⁹⁸ This is the case whenever there is obligatory evidence recording/registry, which is not the case for instance for an European arrest warrant.

⁹⁹ Portugal, judge.

SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1. PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS ¹⁰⁰	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) Before questioning a person against whom there is enough suspicion and an investigation is being carried out against, this suspect has to be held as a defendant, as established in article 58 (1) a) of the CPP. The rights and duties of a defendant are set in article 61 of the CPP, and these are of mandatory information to the suspect¹⁰¹, then defendant, in that same act. These rights are: right to be present at any procedural act that directly affects them; to be heard by the court or examining magistrate every time a decision that personally affects them is made; to be informed of the facts they are suspected of having committed before giving a statement to any authority; right to remain silent; right to be assisted by a lawyer or request that one is appointed; right to be assisted by a legal counsel in every procedural act they have to participate in and, whenever arrested, to contact with their lawyer in private; to participate in the investigation and the instruction stages by providing evidence and requesting needed</p>

¹⁰⁰ See in particular Article 3 and relevant recitals of Directive 2012/13/EU.

¹⁰¹ A suspect, as defined in article 1 e) of the CPP, is a person against whom there is indication that he or she committed a crime or is preparing to commit one or that participated or will participate in one. The suspect has particular rights attributed to the statute of suspect under Portuguese criminal procedural law. First and foremost a suspect has the right to be held as a defendant, at his or her own request (article 59 (2) of the CPP) and as long as measures that affect him or her personally have been undertaken in an investigation to ascertain the commitment of the criminal offence. With the act of holding as a defendant all rights of defence are immediately safeguarded. Also, and among others, a suspect has the right not to be detained for more than six hours for identification, as established in article 250 (6) of the CPP, right to contact a person of trust during the identification process, as set in article 250 (9) of the CPP, and, in the same terms as a witness, right against self-incrimination, right to assistance of a legal counsel whenever giving a statement and right not to have his or her statements used as proof (article 132 of the CPP).

measures; to be informed by the criminal police authority or judicial authority to which they must give a statement of the rights they have; to appeal of any decision against them. They shall also be informed of the procedure to follow to request that a legal counsel is nominated in case of financial hardship, as established in Law 34/04, of the 29th of April. Every defendant is put into statement of identity and residence (coercive measure) after the act of holding as a defendant, in a continuous act.

The act of holding someone as a defendant when made by the criminal police authority needs to be communicated to the competent judicial authority (which can either be the public prosecutor or the examining magistrate, depending on the case), in order to be evaluated and validated. Communication by the police to the judicial authority has to be made within 10 days and the confirmation by the judicial authority also needs to be provided within 10 days, as established in article 58 (3) of the CPP.

If the defendant is under arrest (in order to be put into custody the suspect needs to be held as a defendant), the defendant has further rights of which he or she shall be informed, adding up to the mandatory information about the rights and duties established in article 61.

The Regulation of the Material Conditions of Detention in Police Premises (*Regulamento das Condições Materiais de Detenção em Estabelecimentos Policiais*, approved by Decision no. 8684/99, dated 20 April 1999)¹⁰² sets forth the need to inform the detained of the right to contact a family member or a person of trust (paragraph 14.2); and the right to inform his or her family members of the situation he or she is in, including using the police station telephone when there is no public phone (paragraph 14.4)¹⁰³. The right to urgent medical assistance is not of mandatory information to the detained, however, the authorities are obliged to provide for this right. Paragraph 14.5 of the Regulation establishes that the authorities are bound to help the defendant arrested solving any urgent personal problems and in paragraph 14.6 of the

¹⁰² The Regulation is applicable to detention areas of police forces under the oversight of the Ministry of Internal Affairs (*Ministério da Administração Interna*), which is to say GNR and PSP.

¹⁰³ When a decision imposing pre-trial detention is ordered the legal counsel is immediately served and, whenever the defendant so wishes, also a family member or person of trust is, as established in article 194 (10) of the CPP. The right to contact consular representation can be extracted from this same article.

		<p>Regulation the obligation of registering the exact circumstances in which the arrest took place and a description of any injury he or she has and stating the origin of this injury.</p> <p>Another Regulation¹⁰⁴ establishes the exact same information right regarding rights of the detained and rules to detention areas of the PJ (which is under the direct oversight of the Ministry of Justice) and detention areas within courts. In this Regulation it is clearly stated that detainees further have the right to contact with their embassy or consulate. Both by-laws comprise the right to interpretation in case the detainee does not understand the Portuguese language.</p> <p>When arrested, the suspect, afterwards hold as a defendant, shall also be informed of the reasons for the arrest in the moment of the arrest. This information should include the facts and corresponding legal basis (article 27 (4) of the Portuguese Constitution and article 258 (1) c) of the CPP). The rights and duties of the defendant, however, are communicated in the later moment of holding someone as a defendant. Before questioning, the defendant will also be informed of why he or she will be questioned. In case of detained defendant, he or she shall always be heard by a judicial authority (examining magistrate and before that by a public prosecutor if it is not possible to proceed with first judicial questioning immediately), within 48 hours, that shall confirm the arrest or free the defendant¹⁰⁵.</p> <p>During police questionings, the defendant shall furthermore be informed (aside from, once more, the rights established in article 61) of the reasons for the arrest (article 141 (4) c) <i>ex vi</i> 144 (2)); and the exact facts he or she is suspected of having committed, including, whenever known, the time, place and feature of the circumstances (article 141 (4) d) <i>ex vi</i> 144 (2)). This information shall be included in the report of the police questioning (article 141 (4) <i>in fine</i>).</p> <p>The Portuguese Bar Association mentioned¹⁰⁶ that in the investigation stage some bad practices occur although the law is clear regarding the procedures to follow, both by the criminal police authorities and public prosecution. Namely concerning the explanation of the rights of</p>
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¹⁰⁴ Regulation on the Conditions of Detention in the Premises of the Judiciary Police and of the Courts and Services of the Public Prosecution (*Regulamento das Condições de Detenção nas Instalações da Polícia Judiciária e em Locais de Detenção Existentes nos Tribunais e em Serviços do Ministério Público*), approved by Decision No. 12786/2009, dated 29th of May.

¹⁰⁵ Portugal, representative of the Judicial Police.

¹⁰⁶ Portugal, representative of the Portuguese Bar Association.

		<p>the defendant (instead of simply giving the document where they are stated) or explaining the facts that the person is suspected of having committed when he or she did not understand the information that was provided. He further added that often the authorities rely on the legal counsel to explain these rights to the defendant. SOLIM is of the same opinion¹⁰⁷ and said that it is not enough to deliver a paper, it is crucial to guarantee full understanding by explaining this information, and that with their associates who faced such problems this rarely happened. The representative of the Portuguese Bar Association affirmed, however, that he has knowledge of training being currently provided on this matter to police officers, but that it still needs a lot of time to become the common practice.</p> <p>The Portuguese Bar Association further informed CESIS that still there have been cases where the suspect is questioned as a witness instead of being immediately held as a defendant, when it is already known that an investigation is running against that suspect for a reasoned suspicion that the suspect did commit the crime.</p>
		<p>b) Both the act of holding someone as a defendant and the statement of identity and residence encompass mandatory delivery of documents. The existing templates for the act of holding someone as a defendant contain indication of all information provided in terms of rights and duties criminal procedural law attributes to the defendant and furthermore states that the defendant understood what these implied. These documents are of mandatory signature by the defendant and the police shall state the reason why a defendant refuses to sign it, if that is the case. In order to hold someone as a defendant, the police officer shall inform the suspect that, from that moment on, he or she will be considered a defendant in a criminal proceedings and name and, if needed, explain the rights and duties that come with that position in the proceedings. This information has to be provided both orally and in writing, as established in article 58 (2) (4) of the CPP. It is mandatory to deliver a written document where the number of the proceeding is clearly stated and the legal counsel (if one was appointed) is identified, and the rights and duties prescribed in article 61 are written as well. This document shall be provided in the earliest moment, if possible in the moment of holding someone as a defendant.</p> <p>When a defendant is arrested, information about the reasons for the arrest needs to be provided. When a person is arrested outside of a <i>flagrante delicto</i> an arrest warrant is needed (article 257 (1) of the CPP). Therefore, the facts that led to the arrest and the circumstances</p>

¹⁰⁷ Portugal, representative of Immigrant Solidarity.

that form the legal basis for the arrest are written in the arrest warrant, a copy of which will be delivered to the defendant (article 258 (3) of the CPP). In case of urgency and danger caused by delay, however, detention can be ordered by any means of telecommunications and confirmed in writing immediately afterwards (article 258 (2) of the CPP).

Furthermore, according to paragraph 14.1 of the Regulation of the Material Conditions of Detention in Police Premises a poster in several languages should be placed in the detention area in a visible location. This poster (according to IGAI¹⁰⁸ nowadays in every detention area of the police forces within the Ministry of Internal Affairs in 5 languages) shall consist of listing the rights and duties of the defendant, transcribing article 61 of the CPP in full, and the rights and duties of the detained. The Regulation on the Conditions of Detention in the Premises of the Judiciary Police and of the Courts and Services of the Public Prosecution also comprises the same right, under article 4 (1), but it entails not only transcription of article 61 of the CPP but also of articles 250 (identification of a suspect and request for information), article 192 (2) (no coercive measure shall be ordered when there are reasonable motives to believe in the existence of causes for exclusion of responsibility or extinction of the criminal proceedings), article 194 (8)¹⁰⁹ (communication of the decision to impose pre-trial detention to the defendant's legal counsel and, if requested, to a person of trust), all of the CPP; as well as articles 27 to 33 of the Portuguese Constitution, where the timeframe for detention is determined (article 28 of the Portuguese Constitution).

The Regulation of the Material Conditions of Detention in Police Premises is currently under revision (pending in the Council of Ministers for about eight months) and shall be approved soon, according to information provided by IGAI¹¹⁰.

It is important to highlight that both Regulations determine the need for a registry of the conditions of detention (*livro de detidos*) to be kept, where information such as the conditions the defendant was in when he or she entered the facilities, the medical assistance needed, food and water provided, and even if a contact with a family member was made, everything

¹⁰⁸ Portugal, representative of the General Inspection of the Internal Affairs.

¹⁰⁹ This is not the current reading of the article mentioned, however it is still kept as such in the leaflet and posters available. This right remains unchanged and is now established in article 194 (10).

¹¹⁰ IGAI (2013), *Relatório Global 2012 (Síntese) – Inspeções Sem Pré Aviso A Postos da GNR e Esquadras da PSP*, available at: www.igai.pt/Atividade/Processos/Documents/Relatorio%20Global%20Ano%202012_Sintese%20-%20Inspe%C3%A7%C3%B5es%20sem%20aviso%20pr%C3%A9vio%20a%20postos%20da%20GNR%20e%20esquadras%20da%20PSP.pdf.

needs to be registered in this book that is mandatory to every police station with a detention area.

Finally, the information provided during an interrogation is given orally. However, this information is written as part of the report of the interrogation, all information except the rights established in article 61 and read in the beginning of the questioning are there registered (article 141 (4) of the CPP *in fine*, *ex vi* article 144 (2) of the CPP), but it is stated that the defendant was informed of them. Even though to the present date only the first judicial hearing of a defendant (article 141 (7) of the CPP) and the court hearing (article 364 (1) of the CPP) are also registered through recording (audio or audiovisual), this possibility can be used as well in other hearings and questionings, including police questioning, as established in article 141 (7) of the CPP *ex vi* article 144 (2) of the CPP. Some services of the Public Prosecution already use it, but only a few, and the criminal police authorities do not have such means¹¹¹.

An issue raised by the representative of the Portuguese Bar Association¹¹² was the manner in which documents are signed by the defendant. The lawyer was concerned that often defendants do not necessarily understand what they are signing, due to the lack of explanation of the rights and duties expressed above in a).

SOLIM¹¹³ concurred with this view of the Portuguese Bar Association and further added that often interpreters are not present during detention and arrest warrants are often not translated either in the moment of detention.

- c) The act of being hold as a defendant, with the mandatory provision of information it implies, needs to be guaranteed before the suspect is questioned as a defendant (article 58 (1) a) and (2) of the CPP). If such formalities are unmet or breached the statements given by the suspect cannot be used as evidence (article 58 (5) of the CPP).

In case of arrest, the obligatory information (namely, reasons for the arrest) shall be provided upon detention (article 258 of the CPP).

¹¹¹ Portugal, representatives of the General Prosecution Office, the National Republican Guard, the Judicial Police, the Police of Public Safety and the Service for Foreigners and Borders.

¹¹² Portugal, representative of the Portuguese Bar Association.

¹¹³ Portugal, representative of Immigrant Solidarity.

		<p>The timeframe for information that shall be provided orally within the interrogation is the act itself.</p>
<ul style="list-style-type: none"> • court hearings; 		<p>a) The defendant is personally informed of the day the court hearing will take place through a written notice that includes: naming the facts the defendant is accused of and respective legal provisions (it may be made by referral to the accusation); the place, date and time of the hearing; appointing the legal counsel if the defendant still does not have one; and it is dated and signed by the judge (article 313 (1) a) to d) of the CPP). This is a personal notice to the defendant (article 113 (10)) and it shall be served together with a copy of the accusation.</p> <p>During trial the defendant is informed by the judge of the defendant's right to make a statement at any moment during the court hearing and to the defendant's right to remain silent, as established in article 343 (1) of the CPP.</p> <p>Absence of the defendant from the court hearing is only allowed in very exceptional occasions, therefore the rule is that presence in court is an obligation (as well as a right) of the defendant. However, the defendant can go away from the court room if he or she was already questioned and the court does not deem his or her presence absolutely necessary, being therefore represented by his or her legal counsel (article 332 (5) of the CPP). The same applies for situations in which the defendant, by his or her fault or his or her negligence, incapacitated him or herself of continuing to participate in the hearing (article 332 (6) of the CPP). Or for cases where the defendant disrespects the court repeatedly throughout the session (article 325 (4) of the CPP). In such cases, when the defendant comes back to the court room he or she needs to be informed of what happened in his or her absence, and therefore a summary of that is communicated to the defendant, otherwise the hearing will be void (article 332 (7) of the CPP). The same happens if the trial involves several defendants and some are absent, as they come back they have to be informed in sum of what happened for the hearing not to be void (article 343 (4) of the CPP).</p> <p>Trial can proceed in the absence of the defendant when the defendant who was regularly noticed of the date, time and place of the court hearing does not show up and the court, after following all lawful attempts to guarantee his or her presence, does not perceive the defendant's presence from the beginning of trial as absolutely vital to the pursue of the material truth (article 333 (1) of the CPP). If the reason for not being present at the court hearing is attainable, the judge might decide (again, as the presence of the defendant is not considered utterly essential) to proceed with the court hearing and his or her legal counsel can request</p>

		<p>that the defendant is heard in the second court hearing before the end of trial (article 333 (2) (3) of the CPP). The presence of the legal counsel is always mandatory. In these cases, the final decision is noticed to the defendant upon his or her arrest or he or she voluntarily surrender (article 333 (5) of the CPP) and in this notice the defendant is informed of his or her right to appeal the decision and of the timeframe to do so (Article 333 (6) of the CPP).</p> <p>The defendant is also informed of changes to the facts, as will be explained in response to question 3.3.</p> <p>The final decision is read in court at the end of the hearing and the parties are considered noticed from then on (even the absent defendant, as he or she will be considered noticed through his or her legal counsel that is present), as established in article 372 (3) (4) of the CPP. The judgment is deposited in writing at the court secretariat (article 372 (5) of the CPP).</p> <p>The procedures described are form the common proceedings. Special proceedings forms have other particularities regarding namely timeframe but the information provided is the same.</p>
		<p>b) The information above mentioned is provided orally by the judge (article 343 (1) and article 358 of the CPP). The court hearing is mandatorily recorded (article 364 (1) of the CPP). The judgment is also written and made available at the court secretariat (article 372 (5) of the CPP).</p> <p>Regarding special proceedings, it is important to mention that in one of these special forms, the summary proceedings (<i>processo sumário</i>), the judgment is given orally and registered in the report of the hearing (<i>acta</i>), but the preferred means is also audio recording (article 389-A (1) (2) (3) of the CPP). A copy of the recording needs to be delivered to the defendant within 48 hours (article 389-A (4) of the CPP) and if the penalty is custodial then the judgement has to be written and read (article 389-A (5) of the CPP).</p>
		<p>c) The information on the right to make statement and right to remain silent is provided at the beginning of the court hearing. The information on non-substantial changes to the accusation or decision by the examining magistrate in the instruction stage confirming the accusation is provided as soon as they are of the judge's knowledge at his or her own motion or at the request of the public prosecutor, the legal counsel or the legal representative of the 'assistant' (article 358 (1) of the CPP).</p>

	<ul style="list-style-type: none"> • any necessary interim hearings; 	<p>a) Any defendant who is arrested and the law does not impose his or her immediate trial¹¹⁴ shall be heard by the examining magistrate within 48 hours after his or her arrest (article 254 (1) a)). This first hearing is known as first judicial questioning of arrested defendant and its regime is established under article 141 of the CPP. At the very beginning of the hearing the defendant has to be informed of the content of article 61 (1) of the CPP (that determines the defendant's procedural rights and duties); the consequences of not exercising the defendant's right to remain silent; the reasons for the arrest; the criminal acts he is suspected of having committed, including, whenever possible, the concrete circumstances related to time, place and means of the offences; the elements of the case considered as evidence, as long as it does not put the investigation, nor the freedom, physical and psychological integrity of other participants in the proceedings or of the victims of crime in jeopardy. This hearing is recorded either in audio or video and other means can only be used if these are not available (article 141 (7) of the CPP). Whenever the arrested defendant is not heard by the examining magistrate in a continuous act to the detention, he or she shall be heard by the public prosecutor of the detention area. This 'non judicial hearing' follows the exact same rules as the first judicial hearing of arrested defendant, meaning that the defendant shall be informed of the information contained in article 141 (4) of the CPP. After this hearing, if the public prosecutor does not free the defendant he or she shall be afterwards heard by the examining judge – article 143 of the CPP.</p> <p>The arrested defendant can be heard in different questioning after this first hearing during the investigation stage, and in that case he or she shall be questioned either by the public prosecutor or the criminal police authority if the former delegated the investigation measures in the latest. During the instruction stage he or she shall be heard by the examining judge and during trial by the presiding judge (article 144). In all these hearings and questionings the same regime applies, which means that again the defendant will be informed of the same rights mentioned. The same applies for questioning of a defendant not under custody.</p> <p>Every questioning/hearing of a detained defendant takes place in the presence of the legal counsel (article 64 (1) a) of the CPP). When in a non-custodial questioning/hearing, the defendant is informed that a lawyer can assist him or her during the questioning (article 144 (4) of the CPP).</p> <p>During investigation stage, the public prosecutor informs the defendant of the day, time and place that any questioning, confrontation or recognition will take place, at least 24 hours before the procedure is due, except if it is a defendant arrested to be present at first judicial questioning (article 143 of the CPP) or, in case of urgency, and there is fear that the evidence will be lost, or if the defendant waives this maximum period, or if the defendant is imprisoned (article 272 (2) of the CPP). The legal counsel receives notice within the same timeframe, except in case of urgency, or if it refers</p>
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¹¹⁴ Therefore excluding proceedings running in summary procedure – article 382 (1) of the CPP.

		<p>to a first judicial hearing of detained defendant, or unless the defendant waives the maximum period (article 272 (4) of the CPP).</p> <p>b) Information is provided orally during these interrogations and hearings. In any case, interrogations comply with the norms established for the first judicial hearing of arrested defendant, namely in what concerns information to provide to defendants (article 141 of the CPP, mentioned prior). This also means that, as much as possible, these interrogations shall be recorded in audio or video. In practice this rarely happens, especially during police questioning, and it is therefore registered in writing. Information is provided orally by the authority presiding the act during the act itself.</p> <p>c) Information needs to be provided within the act itself and following the order legally established and described in a).</p>
	<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 defendant is informed of his or her right to be assisted by a legal counsel in every procedural act and of the right to communicate in private with his or her legal counsel when in custody, as established in article 61 (1) f) of the CPP, in the act of being held as a defendant (article 58 (2) of the CPP).</p> <p>The legal counsel has a duty of complimentary information to the defendant and it is in fact the legal counsel that shall prepare the defendant to the questioning or hearing that will take place, explaining what it is, what will happen and the consequences of their absence. Problems can arise when the legal counsel is appointed right before the hearing. Appointment of legal counsel is nowadays made in an automatic manner, there is a list of lawyers that can be appointed per area of law but at times not enough time is given for the lawyer to contact with the defendant.</p> <p>Recently the Portuguese Ombudsman (<i>Provedor de Justiça</i>) published a report¹¹⁵ that concluded that the regime for communicating with the legal counsel was not ensured in practice in the particular detention center in question, when communications were established by</p>

¹¹⁵ Provedor de Justiça (2012), *Relatório Esquadra da Corujeira da Polícia de Segurança Pública – As condições físicas, de trabalho e de detenção. Os procedimentos especiais*, Lisboa, Provedor de Justiça, available at: www.provedor-jus.pt/site/public/archive/doc/Inspe. PSP_Corujeira.pdf.

		<p>telephone, in breach of the by-law that determines that it is mandatory to allow such contact¹¹⁶. The Ombudsman further urged the definition of procedures to regulate the use of the telephone in detention areas that would allow for communication in private, in order to avoid case by case guidance without legal basis.</p> <p>SOLIM, in interview with CESIS¹¹⁷, was particularly critical of the services provided by lawyers to defendants who are migrants and impoverished. In the experience of the representative interviewed, often lawyers appointed through legal aid to such cases do not provide adequate defense to these defendants, and at times even do not communicate with those who are under custody, in spite of the defendants' attempts to contact in order to prepare defense or request undertaking new measures. He further mentioned that lawyers are mostly provided for only during court hearings and that many times these are appointed shortly before and do not prepare for the case, and at times they do not even speak to the defendant prior to the court hearing.</p>
		<p>b) Information is provided orally but, as mentioned prior, the rights established in article 61 are also provided in writing on the act of holding someone as a defendant.</p>
		<p>c) Information shall be provided in due time for the hearing or questioning, but by the nature of the information we are referring to . Regarding the information on the right to be assisted by a legal counsel, that is provided already in the act of being hold as a defendant.</p>
<p>1.2</p>	<p>Do authorities provide information about any other procedural rights (apart from those</p>	<p>The right to be present in any procedural act that affects the defendant; right to be heard by a judge or examining magistrate when a decision that personally affects them is made; right to communicate in private with his or her legal counsel; right to provide evidence during the investigation and the instruction stages; right to be informed every time of his or her rights by the authority he or she will be heard (article 61 of the CPP).</p>

¹¹⁶ In the case inspected the practice in that detention center was of allowing the defendant to contact the legal counsel when still at the police station where he or she was taken to to be held as a defendant and proceed with communication of the detention. After arriving at the detention center he or she would be forbidden to do so, unless they were not given that chance in the police station.

¹¹⁷ Portugal, representative of Immigrant Solidarity.

	established in Article 3 of the Directive)? If yes, briefly provide information.	
2.	LETTER OF RIGHTS¹¹⁸	Brief Description
2.1	<p>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>	<p>There is no exact equivalent to a letter of rights. The information on rights and duties provided is the document delivered as part of the act of holding someone as a defendant, listing the rights established in article 61 (1) a) to i) of the CPP. The rights there established are: right to be present at any procedural act that directly affects them; to be heard by the court or examining magistrate every time a decision that personally affects them is made; to be informed of the facts they are suspected of having committed before giving a statement to any authority; right to remain silent; right to be assisted by a lawyer or request that one is appointed; right to be assisted by a legal counsel in every procedural act the defendant participates in and, whenever arrested, to contact with the lawyer in private; to participate in the investigation and the instruction stages by providing evidence and requesting needed measures; to be informed by the criminal police authority or judicial authority to which they must give a statement of the rights they have; to appeal of any decision against them. Defendants are also given another document informing of the procedure to follow to request that a legal counsel is nominated in case of financial hardship, as established in Law 34/04, of the 29th of April¹¹⁹. Every suspect has to be held as a defendant when they are arrested and these documents are for the defendant and he or she shall keep them.</p> <p>According to the by-laws above mentioned (as referred to in 1.1 – b for police questioning), it is also mandatory to deliver to the detained defendant a leaflet¹²⁰ stating these and other rights, as established</p>

¹¹⁸ See in particular Article 4 and relevant recitals of Directive 2012/13/EU.

¹¹⁹ Portugal, Law 34/04, which alters the regime for accessing justice and transposes Council Directive 2003/08/CE to improve access to justice in cross-border disputes by establishing common rules relating to legal aid for such disputes, (*Lei n.º 34/2004, Acesso ao direito e aos tribunais*), 29 July 2004, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=80&tabela=leis

¹²⁰ The leaflet produced for these purposes by DGAJ, as a body of the Ministry of Justice, can be found here: www.dgaj.mj.pt/sections/files/circulares/2011/2-trimestre/sections/files/circulares/2011/2-trimestre/oc-40-2011_anexo-folheto/downloadFile/file/OC%2040-2011_Anexo_Folheto%20deten%C3%A7%C3%A3o.pdf?nocache=1308139813.69.

	<p>in articles 3 to 6 of the Regulation on the Conditions of Detention in the Premises of the Judiciary Police and of the Courts and Services of the Public Prosecution and paragraphs 10 and 14 of the Regulation of the Material Conditions of Detention in Police Premises. The delivery of this leaflet and the provision of information regarding the right to contact with a family member or person of trust and the right to contact in private with the legal counsel need to be registered in a report of notice and delivery (paragraph 14.2 of the the Regulation of the Material Conditions of Detention in Police Premises). The Regulation on the Conditions of Detention in the Premises of the Judiciary Police and of the Courts and Services of the Public Prosecution also comprises such an obligation, hence it is also mandatory to include if information on the possibility of contacting the defendant's embassy or consulate (if applicable) is provided and the in article 4 (3) it is established that this report shall also be signed by the detained and if he or she refuses to do so the reasons why he or she did need to be stated in that same document. The latest demands transcription of article 61 of the CPP but also of articles 250 (identification of a suspect and request for information), article 192 (2) (no coercive measure shall be ordered when there are reasonable motives to believe in the existence of causes for exclusion of responsibility or extinction of the criminal proceedings), article 194 (8)¹²¹ (communication of the decision to impose pre-trial detention to the defendant's legal counsel and, if requested, to a person of trust), all of the CPP; as well as articles 27 to 33 of the Portuguese Constitution, where the timeframe for detention is determined (article 28 of the Portuguese Constitution). The presence of an interpreter is established for the provision of these informations. The leaflet should be given to the defendant upon his or her arrival to the facilities where he or she shall be detained and before entering that area.</p> <p>However this leaflet does not seem to be considered in literature or by practitioners¹²² as an equivalent to the letter of rights in the Portuguese context. It seems however the closest to a letter of rights, as it includes the rights established in article 61 of the CPP as well as other rights of interest to the defendant detained. Included in this leaflet, and not in the document provided upon being held as a defendant, is information regarding the maximum number of hours the detained can be arrested</p>
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¹²¹ This is not the current reading of the article mentioned, however it is still kept as such in the leaflet and posters available. This right remains unchanged and is now established in article 194 (10) of the CPP.

¹²² Portugal, lawyer, public prosecutor, inspector of the General Inspection of the Internal Affairs and representatives of the General Inspection of the Internal Affairs, the General Prosecution Office, the Judicial Police, the National Republican Guard, the Public Security Police, the Portuguese Bar Association and of the Service for Foreigners and Borders.

		<p>(information also included in an arrest warrant), <i>habeas corpus</i> and the possibility of contacting consular authorities.</p> <p>The opinion of the DGPJ on the transposition of Directive 2012/13/UE, which was kindly provided to CESIS for analysis for the purposes of this research, however, specifically mentions this leaflet as well as the document of holding someone as a defendant. It further refers to a document of mandatory provision to people in custody, and of obligatory translation, established under article 16 of the Code of Penalty Execution¹²³, when addressing the implementation of article 4 of the Directive to the Portuguese legal system. This article refers to the mandatory immediate communication of rights and duties to the detained person, with explanation and translation if needed.</p> <p>Children (from 16 to 18) arrested in the course of criminal proceedings receive the exact same information as other defendants do. For children between the ages of 12 and 16 the Law on Educational Guardianship applies. Under this law whenever a minor is caught in <i>flagrante delicto</i> committing a crime that has a penalty frame entailing a prison sentence he or she can be detained. However the minor can only remain in custody in case the crime at stake is a crime against persons with an abstract penalty frame of three or more years, in any other case he or she will be detained for identification only (article 52). The minor is to be presented to a judge the Family and Minors Court. If there is no possibility of being immediately heard by a judge, the minor shall remain at the responsibility of the parents or guardian. If that is not possible without jeopardy of the minors presence at a hearing with the judge, or of the reasons for detention, the minor shall remain under custody within the closest educational center or police detention area with separate areas from defendants detained in criminal proceedings (adults), as established in article 54. This is the only moment a child under 16 can remain under custody. The Educational Guardianship law does not specify the existence of any letter of rights for these particular cases. However, a document with the rights and duties of the minor under the Educational Guardianship Law (set forth in article 45) is delivered to the minor and that entails that it has to be given to the minor before custody, in an act that is similar to the act of being hold as a defendant in criminal proceedings¹²⁴.</p>
2.2	At what stage of the proceedings is the	The letter of rights, which is to say the document provided in the act of holding someone as a defendant, is provided within the act of holding someone as a defendant. This means that at the very

¹²³ Portugal, Law 115/2009, Code of Execution of Penalties and Measures Depriving Liberty, (*Lei n.º 115/2009, Código de Execução de Penas e Medidas Privativas da Liberdade*), 12 October 2009, available at:

[www.pgdlisboa.pt/leis/lei_mostra_estrutura.php?tabela=leis&artigo_id=&nid=1147&nversao=&tabela=leis&so_miolo=](http://www.pgdlisboa.pt/leis/lei_mostra Estrutura.php?tabela=leis&artigo_id=&nid=1147&nversao=&tabela=leis&so_miolo=)

¹²⁴ Portugal, public prosecutor and representative of the Public Security Police.

	<p>letter of rights provided? Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</p>	<p>least when a person is accused or when the instruction stage is requested (article 57 (1) of the CPP). It will however be mandatory to hold someone as a defendant if one of the circumstances established in article 58 (1) a) to d) is met. This means: as soon as the suspect, against whom the investigation is running, is to be heard by a judicial or criminal police authority (before the hearing); or the suspect is arrested; or a coercive measure has to be applied; or it is the police or judicial authority that witnesses a crime of mandatory reporting (of which the authority shall inform the suspect) and to that person is attributed with having committed that crime, unless it is utterly unsubstantiated. It is worth mentioning that the concept of “accused” does not find an autonomous status under Portuguese Law. A person has to be held as a defendant (article 58 (1) of the CPP) not only after an accusation is made, as explained. In fact, whenever a person is heard as a witness by an authority (it can be the criminal police authority) and reasoned indication arises that that person is the author of the crime the hearing is suspended immediately to hold that person as a defendant, as established in article 59 (1) of the CPP.</p> <p>This however implies that these documents are not delivered, nor the information there contained provided, at the moment the criminal police authority intercepts the suspect, but only when the suspect is formally held as a defendant, which happens necessarily before entering into custody. In a <i>flagrante delicto</i> situation, the suspect upon interception will be informed of the reasoning of the detention but not of his or her rights and duties, of which he or she shall be informed at the consequent act of holding someone as a defendant that usually takes place at the police station already. There can be a hiatus between interception and the act of holding someone as a defendant, which precedes entering into custody¹²⁵. It seems reasonable that the document itself would only be delivered at the police station but the rights contained could be verbally transmitted at the exact moment of interception¹²⁶.</p>
<p>2.3</p>	<p>Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language</p>	<p>The letter of rights simply contains the rights as they are written in the legal provision (article 61 (1) of the CPP), it has no simplified language concern. There is no mechanism to ensure defendants understand it, but the law, in article 58 (2) of the CPP, establishes that the authorities have to explain the information on rights and duties of the defendant whenever it is needed. Furthermore the document needs to be signed by the defendant and if the defendant refuses to do so, indication of why he or she refused to sign needs to be included. The presence of the legal counsel is not mandatory during the</p>

¹²⁵ Portugal, representative of the Public Security Police.

¹²⁶ Following Gonçalves, F. C. (2013), “O Direito dos Suspeitos e a informação relativamente aos direitos processuais penais no espaço de liberdade, segurança e justiça da União Europeia. Carta de Direitos”. In *Revista de la Escuela Jacobea de Posgrado*, n.º 4, junio 2013, pp. 62, available at: revista.jacobeia.edu.mx/n4/3_FERNANDO...pdf.

	<p>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>act of holding someone as a defendant, but it is an obligation for police interrogation of a detained defendant (article 64 (1) a) of the CPP) and for all interrogations by a judicial authority (article 64 (1) b) of the CPP), as well as for any interrogation if the defendant is blind, deaf, mute, illiterate, does not understand the Portuguese language, is between the ages of 16 and 21 years old, or there is doubt regarding the defendant's reduced liability or unaccountability (Article 64 (1) d) of the CPP).</p> <p>According to the Portuguese Bar Association¹²⁷, this explanation is often not provided and criminal police authorities, but also frequently public prosecutors, come from the assumption that such explanation shall be provided by the legal counsel accompanying the defendant.</p>
3.	RIGHT TO INFORMATION ABOUT THE ACCUSATION¹²⁸	Brief Description
3.1	<p>What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally or in writing)</p>	<p>Defendants are informed of the facts that are hold against them, including circumstances of place, time and manner, if these are known.</p> <p>During investigation stage, and when a defendant is not under custody, interrogation is made by the public prosecutor or the criminal police authority and the defendant is informed of his or her procedural rights (Article 61 of the CPP) and of the facts that are hold against him or her, including circumstances of place, time and manner, if these are known (article 141 (4) a) and d) of the CPP <i>ex vi</i> article 144 (2) of the CPP); and when the defendant is arrested he or she will furthermore be informed of the reasons for the detention (article 141 (4) c) of the CPP <i>ex vi</i> article 144 (2) of the CPP). The information</p>

¹²⁷ Portugal, representative of the Portuguese Bar Association.

¹²⁸ See in particular Article 6 and relevant recitals of Directive 2012/13/EU.

		<p>regarding the facts hold against the defendant is provided orally but is written down in the interrogation report.</p> <p>When a coercive measure is ordered against the defendant, the decision that determines it is noticed in writing to the defendant and the decision contains (otherwise it is void) the description of the concrete facts the defendant is suspected of having committed, including, whenever possible, the circumstances of place, time and manner (article 194 (6) a) and (9) of the CPP).</p> <p>Once the investigation stage ends the accusation is written down with narration of the facts that reason the propose the application of a given penalty, including, if possible, stating the circumstances of place, time and manner of the crime and the degree of participation the defendant had in it and any circumstances that were relevant to determine the particular penalty entailed (article 283 (3) of the CPP). This written decision is noticed to the defendant and his or her legal counsel (article 283 (5) and article 277 (3) of the CPP). It is communicated either by registered post or in person (article 283 (6) of the CPP).</p> <p>When the instruction stage is initiated, and until the end of it, if there is enough evidence that the assumptions determining the application of a given penalty are met, the examining magistrate, in a written decision, confirms the accusation (article 308 CPP). This decision again contains the facts the defendant is hold for. This decision is noticed to the defendant.</p>
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>In the first judicial hearing of a detained defendant, the information is provided orally by the examining judge (article 141 of the CPP).</p> <p>It can also be provided for to the defendant under custody by the public prosecutor in a first non-judicial questioning of the defendant under custody (article 143 of the CPP)¹²⁹.</p> <p>During trial, after the introductory acts, the judge briefly exposes the object of the proceedings by reading the accusation (or decision by the examining magistrate in the instruction stage confirming the accusation) where the facts hold against the defendant are included, in the presence of the defendant (article 339 of the CPP) or, in his or her absence, of the legal counsel (article 333 and 334 of the CPP).</p>

¹²⁹ Portugal, judge of the Court of Appeal and representative of the General Prosecutor's Office.

3.3	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation change?	<p>If there is any non-substantial change of the facts described in the accusation or in the decision by the examining magistrate in the instruction stage confirming the accusation (if such a stage took place), that is relevant to the decision, in the court hearing, the presiding judge, by his or her own motion or at the request of the parties, informs the defendant of these changes and provides him or her with the necessary time to prepare his or her defence (article 358 (1) of the CPP), unless such facts were risen by the defence (article 358 (2) of the CPP). If the court changes the legal description of the facts stated in the accusation or the decision by the examining magistrate in the instruction stage confirming the accusation, the same applies (article 358 (3) of the CPP).</p> <p>Instead, if there is a substantial change to the facts it cannot be considered by the court for the purposes of that particular proceedings and it does not annul trial (article 359 (1) of the CPP) and this changed is informed to the Public Prosecution as a report of other facts, if these are autonomous from the ones under trial (Article 359 (2) of the CPP). However, if the public prosecutor, the defendant and the “assistant” agree to continue trial in light of the new facts and these do not entail the incompetence of the court where it is being judged, the judge informs the defendant of these facts orally and establishes a timeframe for preparation of defence, which cannot be of more than 10 days (article 359 (3) (4) of the CPP).</p>
4.	RIGHT OF ACCESS TO CASE MATERIALS¹³⁰	Brief Description
4.1	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	According to article 89 (1) of the CPP, all material evidence and respective copies and certificates can be accessed by the defendants, unless the proceedings are under investigation secrecy. This means that every evidence included in the case file can be accessed by the defendant (that is to say, all photographs, documents, audio files, video files if existing, summaries, and so forth). When during investigation secrecy, in order to access case materials the parties need to request it to the judicial authority, listing the exact materials they wish to have access to and justifying that these elements are essential to the defence.

¹³⁰ See in particular Article 7 and relevant recitals of Directive 2012/13/EU.

<p>4.2</p>	<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>By default the proceedings is public for all stages, as a result of the principle of openness, and therefore the general public can attend the instruction debate and trial, parties can access case materials (and other people if authorized by the judge) and the media can narrate procedural acts (article 86 of the CPP). While in investigation stage, however, the proceedings might be under investigation secrecy, in which case limitations are imposed. Access to the case materials is limited in the terms established in article 89 of the CPP.</p> <p>During the investigation stage, secrecy can be determined by the examining magistrate at the request of the defendant, the “assistant” and the offended person, provided that the public prosecutor is heard on the matter (article 86 (2) of the CPP). This decision has to be reasoned on the understanding that openness would jeopardise the rights of one of the parties to the proceedings. The Public Prosecutor can also put the proceedings under investigation secrecy if he/she considers it represents danger to the rights of one or more of the parties or if it jeopardises the investigation. This decision by the public prosecutor needs to be confirmed by a judge within 72 hours (article 86 (3) of the CPP). At any moment the above mentioned parties and the public prosecutor can request the end of the investigation secrecy. If the parties present such request to the public prosecutor and it is denied, the case will be forwarded to the examining magistrate whose decision is not subject to appeal (article 86 (4) (5) of the CPP). If the end of investigation secrecy is not requested earlier (article 89 (6) of the CPP), it will end when the investigation stage does (article 276 of the CPP ex vi article 89 (6) of the CPP), unless the examining magistrate, at the request of the public prosecutor, decides to keep it for a maximum of three more months, which can be extended for one more time only in case of crimes of terrorism or highly organised crime (which under Portuguese law consists of trafficking in human beings or arms trafficking, or drugs trafficking, or corruption, or influence peddling, or criminal association, or economic involvement in business and money laundering – article 1 i) and m) of the CPP). The maximum period for this extension is that “that is absolutely necessary to conclude the investigation”, which is to say, according to the judge of the Appeal Court CESIS spoke to¹³¹, the exact timeframe needed to conclude the investigation, the time period the public prosecution can justify with an objective reason, verifiable with the measures of inquiry the public prosecution needs to pursue, explained objectively with the concrete evidence.</p>
<p>4.3</p>	<p>Under what circumstances is access to material</p>	<p>When a proceedings is under investigative secrecy, and as prescribed in article 89 (1) of the CPP, the defendant, the “assistant”, the offended person, the injured party and the answerable civilly can request access to case materials to the public prosecutor who can deny such access on the basis of</p>

¹³¹ Portugal, judge of the Appeal Court.

	<p>refused? Who takes the decision of refusal?</p>	<p>the risk to the investigation or the rights of the parties or the victims. Given such a refusal by the public prosecutor, the judge (examining magistrate), upon appeal by the person concerned, will decide whether such refusal should be maintained or not and this decision is not subject to appeal (article 89 (2) of the CPP).</p> <p>When the defendant is under pre-trial detention (or any other coercive measure except the statement of identity and residence), he/she and his or her legal counsel shall have the opportunity of accessing all case materials that led to the decision of imposing pre-trial detention during the interrogation of the defendant by a judicial authority and afterwards within the timeframe legally established to appeal the decision (article 194 (8) of the CPP). However, the examining magistrate can limit access to such materials if their knowledge constitutes <u>serious</u> jeopardy to the investigation, prevent from finding the truth or put a party to the proceedings or the victim of the crime in danger to their life, liberty and physical or psychological integrity (article 194 (6) b) of the CPP).</p> <p>The decision limiting access to case materials when the proceedings are under secrecy made by the examining magistrate is not subject to further judicial review (article 89 (2) of the CPP). No exception appears to exist in cases where articles 194 (6) b) and (8) apply. This legislative option has been criticized by a part of the doctrine that considers it unconstitutional¹³².</p>
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¹³² Albuquerque, P. P., (2009) *Comentário do Código de Processo Penal à luz da Constituição da República Portuguesa e da Convenção Europeia dos Direitos do Homem*, 3rd edition, Lisboa, Universidade Católica Portuguesa, pp.252.

5.	CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING & SPECIAL MEASURES¹³³	Brief Description
5.1	In which languages can information be provided for the following?	
	a) information on procedural rights	An interpreter will always be nominated whenever the need for informing on procedural rights exists, in the different stages of the proceedings. However, for the act of holding someone as a defendant, in which the defendant is informed of his or her procedural rights, and a document stating them is provided, there are already translated versions of this document into several different languages available within the criminal police authorities and public prosecutors. The languages already available are: German, Arabic, Bulgarian, Czech, Mandarin, Croatian, Spanish, French, Greek, English, Italian, Dutch, Polish, Romanian, Russian, Hindi, Ukrainian and Swedish ¹³⁴ .
	b) letter of rights	The same number as stated in a) as the letter of rights is equivalent to the document with rights and duties of the defendant given upon the act of holding someone as a defendant.
	c) information about the accusation	A translator (or interpreter as, as seen above, accusation has been considered at times as of possible oral translation) will always be appointed to translate into the language needed.
	d) case materials	It will depend on the language in need. A translator will have to be appointed in the same terms as explained above, and to the language in need. Authorities do struggle to find interpreters due to the

¹³³ See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU.

¹³⁴ The number of languages available within the different authorities however seems to vary.

		absence of a central nationwide trustworthy database, but they always find an interpreter, at times having to resort to interpretation into a second language the defendant speaks.		
		Yes	No	Brief Description
5.2	<p>Is there any procedure to ensure that suspects or accused persons have the right to challenge the failure or refusal to provide information on the following?</p> <p>If yes, briefly describe the procedure where relevant.</p>			
	a) information on procedural rights	Yes		In case of refusal or failure to provide information on procedural rights, the defendant can plead voidance of the act, as this failure determines voidance that can be remedied for not abiding to mandatory legal acts (article 120 (2) d) of the CPP). This voidance shall be raised until 5 days after receipt of the notice of the decision to end the investigation stage or until the end of the instruction debate, if there is an instruction stage (article 120 (3) c) of the CPP). The lack or breach of these formalities implies that the statements made throughout the investigation by the defendant cannot be used in court as evidence.
	b) letter of rights	Yes		In case of refusal or failure to provide the document that states the procedural rights and duties of the defendant in the act of holding someone as a defendant, that is seen as the equivalent to a letter of rights in Portugal, the same as mentioned above applies (since the provision of information and the document delivered both form the act of holding someone as a defendant). Therefore, voidance of the act can be raised and statements cannot be used as evidence, as explained in a).

	c) information about the accusation	Yes	<p>The defendant is informed of the accusation by means of personal contact or registered mail (article 283 (5) (6) of the CPP). Notice of the accusation is the means that ensures the possibility of contradiction, a constitutional right established in article 32 of the Portuguese Constitution.</p> <p>Failure to inform about the accusation entails voidance that cannot be remedied for violating basic constitutional rights of criminal procedural law. Therefore, although this particular cause for voidance is not included in articles 119 and 120 of the CPP (where causes for voidance are listed), failure or refusal to inform about the accusation to the defendant and the consequent impossibility of exercising right to defence are voidances that cannot be remedied and são do conhecimento officioso¹³⁵.</p>
	d) access to case materials	Yes	<p>Refusal to provide access to case materials in a way that jeopardises the right to defence of the defendant is an irregularity under article 123 of the CPP. The regime for irregularities is as follows: the issue shall be raised in the act itself or, if the defendant wasn't present in the act, within 3 days after he or she received notice of any follow up in the proceedings or participated in any procedural act (article 123 (1) of the CPP). When the irregularity affects the value of the act then its remedy can be provided for at any moment of the proceedings by motion of the judge (the defendant can inform the judge of the irregularity), as established in article 123 (2) of the CPP.</p>
5.3	<p>Is any official record kept to note the provision of information about the following?</p> <p>If yes, briefly describe where relevant.</p>		

¹³⁵ Portugal, Guimarães Court of Appeal (*Tribunal da Relação de Guimarães*), Guimarães/Case1055/06-1 of the 18th of September 2006. Available at: <http://www.dgsi.pt/jtrg.nsf/86c25a698e4e7cb7802579ec004d3832/d06ac6d3024725c58025722e0041a449?OpenDocument>.

	a) information on procedural rights	Yes		Firstly, record is kept with the document of the act of holding someone as a defendant. The document reads that the defendant stated to have been informed and have understood the rights read and if needed explained to him or her and the defendant signs to it. If the defendant refuses to sign this document, it also has to state the reason why the defendant refused to do so. Also, since this information is provided in the beginning of police questioning and hearings as previously mentioned and these procedural acts are registered, record is kept within the proceedings.
	b) letter of rights	Yes		Record kept with document of act of holding someone as a defendant, in the terms explained above in a).
	c) information about the accusation	Yes		The accusation is of personal notice to the defendant, being signed by the defendant upon receipt. Also, it is again communicated to the defendant in the court hearing, before the defendant is heard.
	d) access to case materials	Yes		During investigation stage, in order to access case materials the defendant needs to request its consultation (article 89 (1) of the CPP), therefore both the request and the simple decision of the public prosecutor (or the examining magistrate) are included, and insofar registered, in the proceedings. After the investigation stage, a request to the judge is only needed for taking the case materials for analysis outside of the court secretariat (decision will establish a timeframe). Other than that, consultation is possible at any time in the secretariat with no formalities, and therefore no need for formal request or signature of any declaration, consultation is made in the spot.
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			

<p>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 relation to each of the listed</p>			
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	vulnerable groups. Is this information in simple and accessible language?			
<ul style="list-style-type: none"> • information on procedural rights 		a)	No	<p>The information is not simplified. The sole mechanism that can be seen as an indirect way to ensure that the information is effectively communicated is the mandatory presence of a legal counsel in every procedural act (except that of holding someone as a defendant) for people with certain physical disabilities, namely deaf, blind or mute (article 64 (1) d) of the CPP). Also, the assistance of an interpreter is obligatory for every procedural act (including that of holding someone as a defendant) for people with hearing impairments, deafness or muteness, under article 93 (1) of the CPP.</p>
		b)	No	<p>According to FENACERCI¹³⁶, there is no simplified information for these vulnerable defendants.</p>
		c)	Yes	<p>For minors between the ages of 16 and 18 years old there are no special materials designed and there are no special legal provisions nor police written procedures on how to inform these particular defendants. The general rules apply. However, the presence of a legal counsel is mandatory in any interrogation of a person younger than 21 years old (article 64 (1) d) of the CPP – presence of legal counsel in such cases is necessary for every procedural act). Also, according to information provided by PSP, special units for vulnerable victims will conduct questioning of such defendants whenever the need is felt. There are special units for vulnerable victims both within PSP and GNR. In both cases these are especially trained and focused units to accompany and hear some vulnerable groups of victims (children, women, elderly, handicapped). These are specialised units also for the investigation of crimes involving these vulnerable victims. Furthermore these units refer victims to the necessary support within a network and also work on prevention. These units mostly focus on domestic violence. The assessment of such need is made by the police officer on an empirical basis and there are no guidelines for this particular</p>

¹³⁶ Portugal, representative of FENACERCI..

			<p>purpose. General training for police officers includes reference to this topic but it is only addressed specifically during specialised training (for criminal investigation units as well as specialised unit for vulnerable groups) but mostly, if not exclusively, focuses on the legal aspects (hence the mandatory appointment of a legal counsel previously mentioned).¹³⁷</p> <p>For minors between the ages of 12 and 16 years old¹³⁸ (for which the Law on Educational Guardianship is applicable), there are several rights of which the minor shall be informed (established in article 45 of the Law on Educational Guardianship). Among these rights are some of importance to the guarantees of an effective communication. For instance, the minor shall be heard only by a judicial authority (article 45 (2) a) of the Law on Educational Guardianship); he or she can be accompanied by a social service officer or other professional especially trained to provide such assistance during the procedural act (which can also entail professionals dealing with children with disabilities, hence the article 93 of the CPP also applies <i>ex vi</i> article 128 (1) of the CPP) and, if needed, receive psychological support by an expert (article 45 (2) d) of the Law on Educational Guardianship); and the child has the right to be accompanied by his or her parents, legal representative or person that effectively guards him or her, unless contrary decision for his or her own benefit or on the interest of the proceeding (article 45 (2) f) of the Law on Educational Guardianship). The child, under the regime established in Law on Educational Guardianship, can only be heard by a judicial authority (within the Family Law Court, <i>Tribunal de Família e Menores</i>), never the police, as established in article 47 of the Law on Educational Guardianship, and the police has special procedures defined on how to proceed when arresting a child.</p> <p>The holders of parental responsibilities shall be informed beforehand of any detention of a minor (12-16) outside of <i>flagrante delicto</i>, except when there is a risk that this communication can undermine the detention, as established in article 53 (1) of the Law on Educational Guardianship. Nonetheless, they shall always be informed as soon as possible after any detention is made (in <i>flagrante delicto</i> or outside <i>flagrante delicto</i> when the holders of parental responsibilities could not be informed before taking into custody,</p>
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¹³⁷ The same conclusion was reached in Gil, A. R. (2013), *Study on children's involvement in judicial proceedings – Contextual overview for the criminal justice phase – Portugal*, Milieu Ltd – Law & Policy Consulting, European Commission, pp.23; police officer and representatives of the Public Security Police.

¹³⁸ Procedures of the PSP on how to proceed, which regime to apply and the formalities it entails, when faced with a child offender are available at: http://www.pgdlisboa.pt/ficheiros/cd_dir_fm/procedimentos_policiais.pdf.

				and this shall be done within the shortest timeframe), according to article 53 (2) of the Law on Educational Guardianship. The holders of parental responsibilities can exercise the rights of the child on behalf of the child, according to article 45 (4) of the Law on Educational Guardianship, for instance of being informed of the rights of the child (article 45 (2) h) of the Law on Educational Guardianship).
• letter of rights	a)	No		There are no written adapted materials ¹³⁹ , usually when in the presence of a defendant that is blind, for instance, the document is read to the defendant.
	b)	No		There are no simplified materials.
	c)	No		<p>There is no form different than that provided to adult defendants¹⁴⁰, for juvenile offenders (16-21 years old).</p> <p>For children under the Law on Educational Guardianship there are other materials that are available. It is important to note that in case of arrest, the child will only be put into custody as a last resort (if needed be, and if possible, the child will first be put into custody by trusting the child to his or her parents or guardian). When put into custody by an authority, the child is not taken to a prison or detention area, but to an “education centre”. Article 171 of the Law on Educational Guardianship establishes the rights a child under such detention has.</p> <p>The child also has the right to be informed of his or her rights as a detained, in the shortest time period possible. This information has to be provided in a clear and full manner, including explanation about how to exercise these rights and the consequences of breaching duties (article 5 (1) of the General and Disciplinary Regulation of the Education Centres¹⁴¹). This information is also provided to the people with parental responsibilities</p>

¹³⁹ Portugal, representatives from all criminal police authorities, the General Prosecution Office, the General Inspection of the Internal Affairs and the Portuguese Bar Association.

¹⁴⁰ Portugal, all interviewed stakeholders.

¹⁴¹ Portugal, Decree-Law No. 323-D/2000, which approves the General and Disciplinary Regulation of the Education Centres (*Decreto-Lei n.º 323-D/2000, que aprova o Regulamento Geral e Disciplinar dos Centros Educativos*), 20 December 2000, available at: dre.pt/application/file/315420.

				over these children (article 5 (2) of the General and Disciplinary Regulation of the Education Centres).
<ul style="list-style-type: none"> information about the accusation 	a)	Yes		The presence of a legal counsel is always mandatory in every procedural act (except that of holding someone as a defendant) for people with certain physical disabilities, namely deaf, blind or mute (article 64 (1) d) of the CPP). Also, the assistance of an interpreter is obligatory for every procedural act (including that of holding someone as a defendant) for people with hearing impairments, deafness or muteness, under article 93 (1) of the CPP.
	b)		No	There is no simplified information.
	c)	Yes		When the child is between 16-18 years old, the same norms as for adults apply, as so is the regime for juvenile offenders in these terms (applicable to youth between 16 and 21 years old). Under the Law on Educational Guardianship, however, the child and the respective holders of parental responsibilities receive information about the accusation in the notice of the preliminary hearing (article 94 (6) of the Law on Educational Guardianship). During the hearing there are special measures to take into account the vulnerability of the child, such as the possibility of not wearing the institutional outfits (article 96 (2) of the Law on Educational Guardianship) or, if needed, considering the severity of the crime and the personality of the child, determining a place for the hearing outside court premises (article 96 (1) of the Law on Educational Guardianship). Throughout the whole of this proceedings, the best interest of the child is the underlying principle and measures on how to communicate with the child apply in all acts. Therefore also when informing of the accusation, making use of a simple language, in the beginning of the hearing (article 104 (1) of the Law on Educational Guardianship).
<ul style="list-style-type: none"> access to case materials 	a)		No	Access to case materials does not seem to differ from that generally provided, as previously explained.
	b)		No	Access to case materials does not seem to differ from that generally provided, as previously explained.

		c)		No	Access to case materials does not seem to differ from that generally provided, as previously explained.
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