

Comparative legal research in the context of Directive 2010/64/EU:



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Background of FRA's research

- EC request in May 2014
- FRA's work programmes 2015 and 2016
- FRA's research network – desk research 2015
 - A selected number of cross-checking with organisations/practitioners
 - Questionnaire sent to EULITA members
- Comparative analysis during autumn/winter 2015 & Q1 2016
- Published report in 2016
 - Focus on promising practices and opportunities for EU and MSs

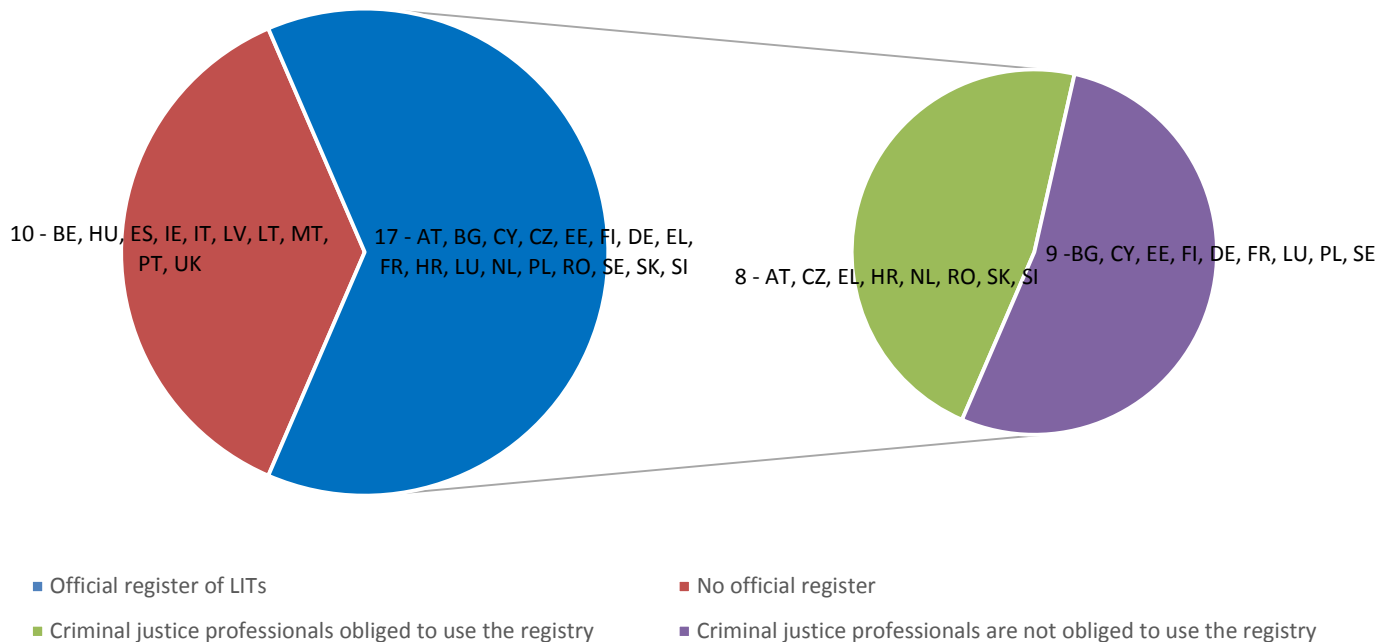
Issues covered

- ascertaining the necessity of and timeline for interpretation and translation;
- the notion of ‘essential documents’ with regard to the right to translation and exceptions to this right;
- communication between suspected or accused persons and their legal counsel in direct connection with ...;
- quality requirements of interpretation and translation services,
- available remedies.

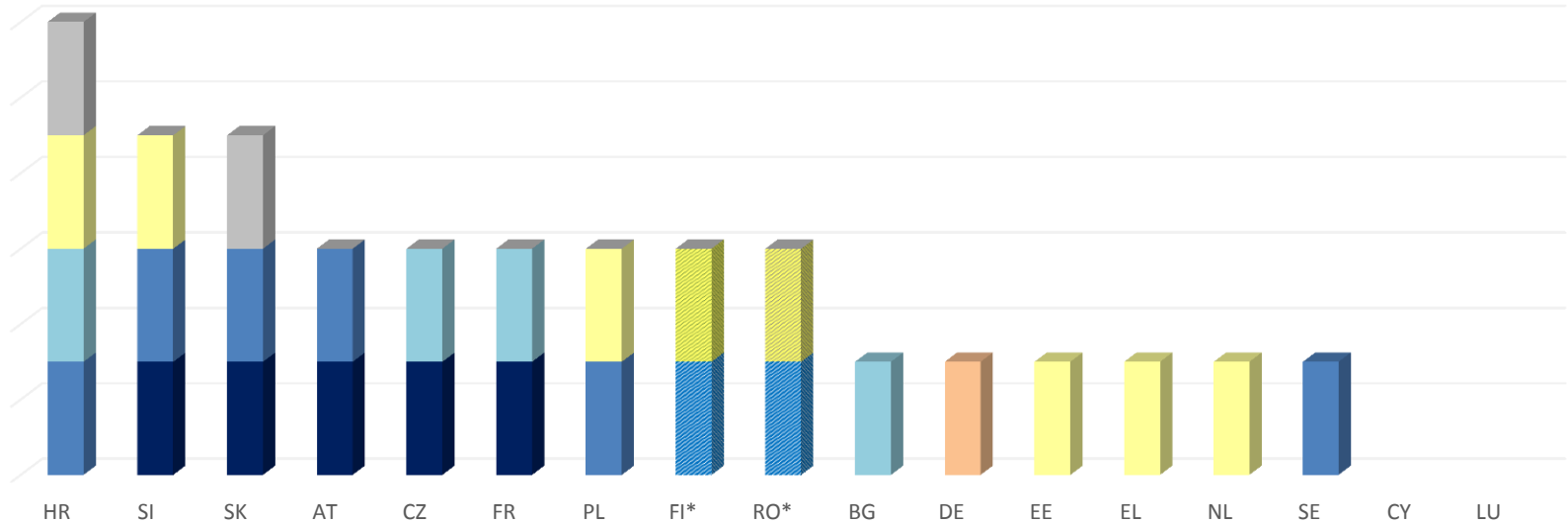
Quality requirements of interpretation and translation services

- Official registers (incl. minimal requirements);
- Other mechanisms to secure legal interpretation and translation services;
- Working conditions of legal interpreters and translators;
and
- Vulnerable groups.

Official registers



Official registers: minimal requirements



■ Professional Experience
 ■ Exam
 ■ Language Requirement
 ■ Different levels of qualifications across the country
 ■ Higher Education
 ■ Vocational Training

Field perspectives

- *“Interpreters in Ireland who work in the courts are people who speak English and another language and who are willing to work for €15 per hour in courts or for €18 in police stations and not be paid for transport or travel time. They are not tested in any way to establish if they can actually interpret. There is no training and no testing. Interpreters are provided, but what use is an interpreter who can’t interpret?”*

Working conditions

“EU Member States should consider introducing specific safeguards to ensure that the confidentiality of communication between suspected or accused persons and their legal counsel is strictly respected and not jeopardised by the use of state-appointed interpreters.”

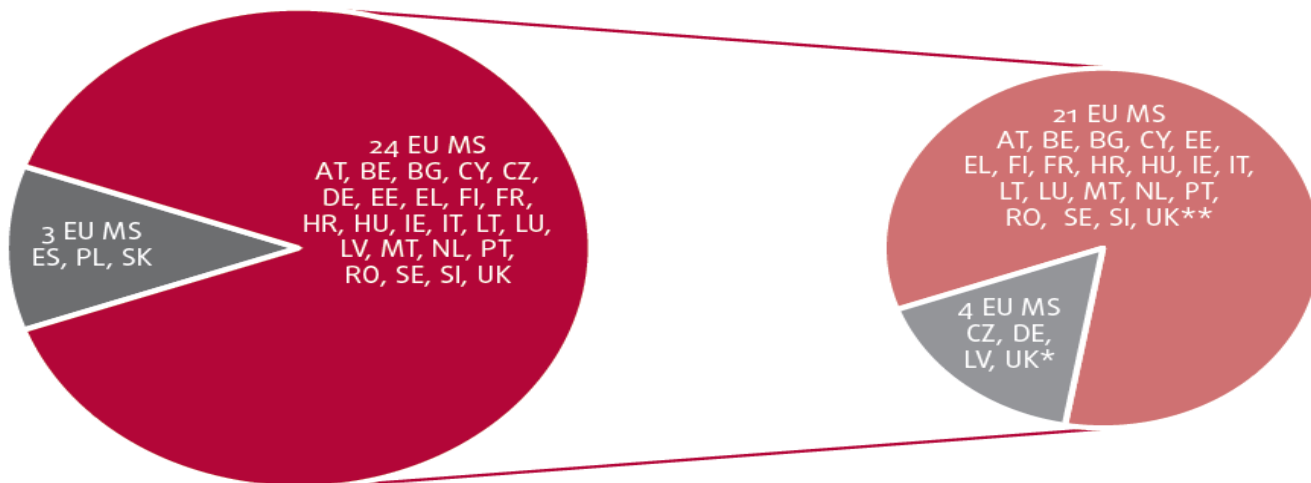
Facilitating conditions to ensure high quality interpretation in courts: policy contents

- How to book an interpreter (to ensure interpreters with legal specialisation with the right language and dialect etc.)
- Preparation before the interpretation (access to material, checking of interpretation equipment etc.)
- The court's treatment of the interpreter during the court hearing (time for introduction, awareness of the need for breaks etc.)
- Service and safety (awareness of safety risks for the interpreters, break room etc.)

Quality requirements of interpretation and translation services

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- Vulnerable groups

Legal provisions on interpretation and translation for persons with speech, hearing or visual impairments in EU Member States



- States that have special provisions concerning people with impairments
- States that have special provisions concerning persons with speech and hearing impairments only
- States that do not have any special provisions
- States that have special provisions concerning persons with speech/hearing and visual impairments

Pursuant to its specific opt-out regime, Denmark is not bound by either directive. In the United Kingdom, the rules differ in *England and Wales* and in *Scotland and Northern Ireland*, so *the UK is shown twice*.

* UK – *Scotland and Northern Ireland*.

** UK – *England and Wales*.

Vulnerable groups

“... EU Member States taking steps to ensure the protection of the rights of suspects or accused persons whose vulnerability affects their ability to follow proceedings and make themselves understood should ensure compliance with their international human rights law obligations. In particular, Member States should adhere to the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC) – and the interpretative elaborations made by the expert bodies monitoring these conventions. EU Member States are also encouraged to follow guidelines developed by the Council of Europe in this field... [and] are also encouraged to follow the guidance set out in the European Commission Recommendation on the procedural safeguards for vulnerable suspected and accused persons in criminal proceedings who are not able to understand and to effectively participate in such proceedings due to age, their mental or physical condition or disabilities.”

Quality requirements: conclusions

- Official registers: *“renewal of appointment on a regular base, mandatory professional development, mandatory insurance, special training for LIT working with vulnerable groups”*;
- Developing common curricula and standards of training for legal interpreters and translators working in criminal justice system across the EU;
- Clear guidance and rules on alternative ways of securing LIT
- Work of associations of LITs: ethic codes and codes of conduct;
- Working conditions of LIT;
- Training modules for criminal justice professionals.

FRA Opinion 1

When implementing their obligations concerning suspected and accused persons' right to interpretation or translation under Directive 2010/64/EU, EU Member States should consider developing practical guidance on how to assess the need for interpretation and translation. When developing such guidance, competent authorities should consider consulting relevant national associations that represent legal interpreters and translators who have practical experience with providing such services in criminal justice proceedings.

FRA Opinion 2

To enhance legal certainty and clarity, and in line with the overall objective of strengthening the protection of rights of suspects and accused persons under Directive 2010/64/EU, EU Member States should consider introducing specific lists of essential documents – and providing guidance on how to apply any exceptions. Extending such lists of essential documents beyond the three types of documents listed in Article 3 of Directive 2010/64/EU, which lays down minimum common standards in this regard, is to be encouraged given that written translations constitute an additional fair trial safeguard.

FRA Opinion 3

To safeguard the effectiveness of the right to a fair trial in line with the overall aim of Directive 2010/64/EU, EU Member States should consider ensuring that suspected and accused persons receive, at the very beginning of proceedings, explicit information about the availability of interpretation for communicating with their legal counsel. These should be outlined in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

FRA Opinion 4

EU Member States should consider introducing specific safeguards to ensure that the confidentiality of communication between suspected or accused persons and their legal counsel is strictly respected and not jeopardised by the use of state-appointed interpreters.

FRA Opinion 5

When establishing a register of legal interpreters and translators in line with Article 5 (2) of Directive 2010/64/EU, EU Member States should consider introducing relevant safeguards to maximise the quality of translation and interpretation services ensured through such a register. For instance, they should consider defining clear admission criteria, and providing for regular registration renewals, mandatory professional development for legal interpreters and translators, and special training for legal interpreters and translators who work with vulnerable groups. At the same time, EU Member States should consider making it mandatory for criminal justice authorities to use such registers when they need interpretation and translation services in the context of criminal proceedings.

FRA Opinion 6

To ensure that the interpretation and translation provided meets the required quality, MSs could consider developing clear and binding rules on the conditions for using alternative ways of securing legal interpreters or translators. Such rules should include specific quality safeguards, such as a minimum level of education or experience to be included on alternative lists. MSs should also consider supporting other measures that help safeguard the quality of interpretation and translation services, such as codes of conduct and ethic codes specifying professional quality standards. Using ICT technology solutions or engaging in cross-border cooperation with other states could help ensure the quality of services even when appropriately qualified translators or interpreters are not available in a given country. In a cross-border context, criminal justice authorities could share resources, such as legal interpreters and translators available in their national registers.

FRA Opinion 7

EU Member States should take steps to ensure the protection of the rights of suspects or accused vulnerable persons. In particular, Member States should adhere to the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC). EU Member States are also encouraged to follow guidelines developed by the Council of Europe in this field, particularly its Guidelines on child-friendly justice. EU Member States are also encouraged to follow the guidance set out in the European Commission Recommendation on the procedural safeguards for vulnerable suspected and accused persons in criminal proceedings who are not able to understand and to effectively participate in such proceedings due to age, their mental or physical condition or disabilities.



Thank you!

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