

Report on the implementation of Directive 2012/13/EU on the Right to Information in Criminal Proceedings

Italy

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Scoring Matrix

Standards	Indicators	Legal Transposition	Practical Implementation Score	Overall Percentage Score
Standard 1: Transposition	Indicator 1.1: The State has brought into force laws, regulations and administrative provisions necessary to comply with the Directive	2	1	75%
Standard 2: Training	Indicator 2.1: Judges, prosecutors, police and judicial staff involved in criminal proceedings are trained with respect to the objectives of the Directive.	0	0	0%
Standard 3: The right to information about rights in the criminal justice process	Indicator 3.1: Suspects and accused persons are provided with information about their rights in the criminal justice process.	2	2	100%
	Indicator 3.2: Information about rights is provided in simple and accessible language, taking into account any needs of vulnerable suspects or accused persons.	1	1	50%
Standard 4: The right to information about the nature of the charge (accusation).	Indicator 4.1: Suspects and accused persons are provided with information about the criminal act they are suspected or accused of having committed.	2	2	100%
	Indicator 4.2: Suspects and accused persons who are arrested or detained are informed of the reasons for their arrest or detention.	2	2	100%
Standard 5: Provision of the Letter of Rights to suspects or accused persons who	Indicator 5.1: Suspects and accused persons are provided with a written Letter of Rights on arrest and/or detention.	2	0	50%
	Indicator 5.2: The Letter of Rights is provided promptly, in a language and manner that the suspected or accused	1	0	25%

are arrested and/or detained.	person can understand.			
	Indicator 5.3: The Letter of Rights contains adequate information on all of the rights set out in Article 3 and 4 of the Directive.	2	0	50%
Standard 6: Provision of the Letter of Rights in European Arrest Warrant proceedings	Indicator 6.1: Suspects and accused persons, who are subject to a European Arrest Warrant, are provided with a copy of a Letter of Rights.	2	0	50%
	Indicator 6.2: The Letter of Rights is provided promptly, in a language and manner that the suspect or accused person can understand.	1	0	25%
Standard 7: The right of access to the materials of the case	Indicator 7.1: Suspects and accused persons who are arrested or detained, or their lawyers, receive documents relating to the case which are essential to challenging the lawfulness of the arrest or detention.	1	1	50%
	Indicator 7.2: Suspects and accused persons are granted access to all material evidence in due time to exercise the rights of the defence.	1	1	50%
	Indicator 7.3: Access to the materials of the case can only be refused in limited circumstances.	1	1	50%
Standard 8: Remedies	Indicator 8.1: Suspects and accused persons, or their lawyers, have the right to challenge the failure or refusal to provide information.	2	1	75%

FINAL GRADE FOR IMPLEMENTATION OF THE DIRECTIVE	DIRECTIVE HAS BEEN PARTIALLY IMPLEMENTED	56,66%
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PART ONE

Introduction

On 2 June 2014, the deadline passed for implementing the *Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings*. By this date, all Member States were required to bring into force all laws, regulations and administrative provisions necessary to comply with this Directive. States should have transmitted the text of any legal measures to the European Commission, but many have not yet done so. Even when States have purported to transpose the Directive into law, this does not mean they have ensured actual implementation in practice.

This research aims to assess whether States have effectively transposed and implemented the Directive. It deeply monitors implementation and analyses whether the rights in the Directives have become a proper part of national practices.

The research has been carried out in Lithuania, Austria, Italy, Hungary, and Poland.

The adoption of EU Directives on criminal justice is a tremendously significant development, setting new norms for the rights of suspects and defendants across the EU. We hope, with the production of this research, to help support the EU Commission and the individual Member States to better understand the state of implementation in practice, and to highlight good practices and challenges in implementation.

Methodology

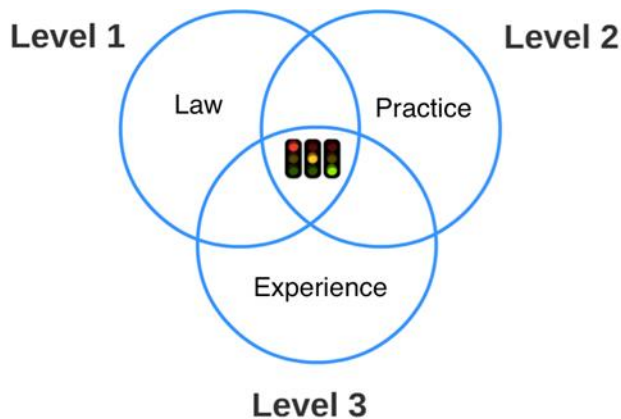
Country teams have used a standardized methodology to gather data and assess States' compliance with the requirements of the Directive. A comprehensive Monitoring Tool was developed based on a three-stage research approach, with each level producing a traffic-light compliance grading. This multi-level methodology allows an assessment of both *de jure* and *de facto* implementation of the Directive to give an in-depth view of the situation in country.

Level One: The first level of analysis looked at *de jure*, structural components of the implementation of the Directive and involved desk-based analysis of relevant legal documents: the Member States' Constitution, statutes, executive orders and any associated Codes of Practice and relevant case law where case law has the power of precedent.

Level Two: This level of analysis included a survey completed by a sample of criminal defence lawyers. The Level 2 survey assesses how the law is applied in everyday practice.

The online survey has been completed over a period of 13 weeks by 26 criminal defence lawyers working in various Italian cities (such as Milan, Rome, Turin, Bologna and Naples).

Level Three: The final level of analysis is a more nuanced review of certain aspects of the Directive’s implementation. This analysis was only used where standards contained within the Directive were identified as not being met, or being partially met through Levels 1 and 2 analysis. Level 3 was supposed to consist in semi-structured interviews of police and other officers involved in criminal proceedings, as well as criminal defence lawyers, but researchers have been unable to interview such subjects. In fact, the request to be authorised to interview police officers presented to the concerned authorities has been ignored. This has obviously affected the comprehensiveness of the research, as this phase has been *de facto* limited to interviewing 5 criminal defence lawyers – which obviously implies the imposition of some limitations on the findings of the study.



The Monitoring Tool is based on a set of 15 indicators defined under 8 Standards that correspond to the regulations contained in the Directive. Each of the indicators was assessed separately through the research, with compliance being gauged largely from Level 1 and 2 analysis, with Level 3 providing an opportunity for a more nuanced understanding of particular gaps or failings in practice.

Each country is scored on their compliance with each of the 15 indicators, and these scores are calculated to give the country a final grade as to whether they have implemented, partially implemented, or failed to implement the Directive.

Researchers were asked to evaluate whether each indicator has been met (a score of 2), partially met (a score of 1), or unmet (a score of 0), based on the data available. In some cases, the assessment has required a certain degree of professional judgment, and additional analysis against the content of the Directive.

Each of three options – when indicators are met; partially met or not met - has an associated score, which has then be used for calculation purposes. Scores are provided for every indicator, every Standard contained within the Directive and finally, for the Directive as a whole. These scores are as follows:

Score	Grade awarded	What this means

2	Indicator met	The indicator has been met in full. In Level 1 this means that there is evidence that all or almost all procedural rights as per the Directive are protected in national law. At Levels 2 and 3 it means that all or almost all of respondents stated that practice relating to a particular indicator is in compliance with the Directive.
1	Indicator partially met	This means that while some aspects of the indicator are met, this either falls short of the required standard, or represents inconsistent application. At Level 1, more than half of the rights prescribed by the Directive are protected by national law but there are shortcomings. At Levels 2 and 3 will describe a situation where respondents indicated in 50%-89% of cases that the Directive was adhered to. This grade indicates inconsistent practice or significant deviation between the Directive and the practice of the Member State.
0	Indicator not met	The indicator had not been met and this area of the Directive is not implemented in the Member State. At Level 1, this grade that fewer than half of the rights prescribed by the Directive are protected by national law (less than 50%). At Levels 2 and 3 it means that the respondents stated that in most instances (over 50%) the practice did not follow the requirements of the Directive.

Each cell in the compliance matrix should be filled out with a score of 0, 1, or 2. We split the scoring into two categories: the Legal Transposition Score (which uses the information you gained from the desk review at level one of the research) and the Practical Implementation Score (for the information gained in level 2 of the research with the surveys and interviews). We split it so that we can easily point to situations where the law has been transposed in theory but that our research shows failings in implementing that indicator in practice. If an indicator gets a 2 under Level One, and a 0 under Level Two, then this clearly shows a failure of implementation.

The Overall Percentage Score for each indicator is calculated by adding up the Level One Score and the Level Two Score and translating that number into a percentage. The highest score for any indicator is 4. So the following applies: A score of 4 = 100%; a score of 3 = 75%; a score of 2 = 50%; a score of 1 = 25% and a score of 0 = 0%.

The **Final Grade for Implementation of the Directive** is calculated by adding up all of the Overall Percentage Scores, and dividing it by 15, which is the number of indicators.

PART TWO

Background and Legal Context: The *De Jure* Implementation of the Directive

Standard 1: Transposition

In Italy, the transposition of European legislation is regulated by Law 11/2005 – as radically modified by Law 234/2012, which deeply changed the way European law is implemented, by making it more timely and more effective¹. Nowadays, the Government has to present each year, by the 28th of February, two different legislative acts: the European Delegation Bill and the European Bill. Furthermore, if necessary, a further European Delegation Bill containing the conferral of legislative delegate powers to the Government in order to timely and effectively implement EU directives can be adopted by the 31st of July.

According to art. 1 and Annex B of the [European Delegation Bill 2013](#), the Italian Government had the responsibility to implement *Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings* (hereinafter: the Directive). The Italian Government has complied with its obligation to implement the Directive by bringing into force a specific law: [Legislative Decree 101/2014](#) was adopted the 1st of July 2014 and entered into force on the 16th of August. The decree has implemented the Directive by intervening, ex art. 1, on the Italian Code of Criminal Procedure – modifying its articles 293, 294, 369, 369-bis, 386 and 391 – as well as, ex art. 2, on Law 69/2005 (that is, the law that regulates European Arrest Warrants), modifying its article 12. The Italian Government has also brought into force one dedicated administrative provision: in fact, the Ministry of Interior has promptly adopted a ministerial circular to provide the judiciary police operational guidelines (i.e., furnishing models of Letters of Rights in Italian, English, French, Spanish, German and Chinese). The [Ministry of Interior Circular N.559/D/007.15/022571](#) was indeed adopted on the 11th of August and entered into force on the 16th August.

As to today, the Italian State has not submitted a report to the EU Parliament and Council assessing the extent to which the State has taken measures in order to comply with the Directive.

Standard 2: Training

As to today, the Italian State has not taken any measure to provide training to judges, prosecutors, police and judicial staff involved in criminal proceedings with respect to the objectives of the Directive. It must be nevertheless noted that the need to promote an adequate formation of judges, public prosecutors and all other actors involved in the justice system has been explicitly acknowledged in the [2015 Programming Report on the Italian participation to the EU adopted by the Presidency of the Council of Ministers \(Chapter 4, ¶2.4\)](#).

¹ In fact, the implementation of EU directives and framework decisions is now separated from the implementation of other EU documents and international treaties, as the formerly single Community Bill – that included all provisions to implement EU legislation and was presented by the Government at the Parliament at the end of each year – has been divided into two separate legislative instruments.

PART THREE

Implementation of the directive

Standard 1: Transposition

Indicator 1.1: The State has brought into force laws, regulations and administrative provisions necessary to comply with the Directive	
Legal transposition score	2
Practical implementation score	1
OVERALL SCORE	75%

For what concerns the legal transposition score, it has here been evaluated² that the indicator has been fully met as the *de jure* implementation of the Directive has been formally satisfactory: the Italian legislator has indeed took care to adopt all necessary measures to adapt the pre-existing norms to the minimal common European standards set down by the Directive. It must nevertheless be noted that this intervention has been quite minimal and presents at least two critical points. In fact, despite the fact that the Directive puts great attention on three different components of the right to information – i.e., the right to information about one’s rights in the criminal proceedings; the right to information about the nature of the charge; the right of access to materials of the case – Legislative Decree 101/2014 has not dealt with the latter aspect but exclusively with the former two. In other words, the Italian legislator has opted for a rather minimal model of reception, intervening only where strictly necessary and thus arguably losing another precious opportunity for a more organic reform. It has already been noted how this evaluation has been based on the rather questionable assumption that pre-existing norms were sufficient to fully ensure the right of access to materials of the case. In other words, when looking at the *de jure* implementation of the Directive in Italy the first point of concern is that the Italian legislator may have underestimated this crucial point (i.e., Standard 7). Another standard which has certainly been neglected in the phase of the *de jure* implementation is that of training (Standard 2): as to today, the Italian State has indeed failed to take any measure to provide training to judges, prosecutors, police and judicial staff involved in criminal proceedings with respect to the objectives of the Directive. This omission is very critical, as training of actors involved in the criminal proceedings is crucial to ensure the implementation of the Directive in practice.

For what concerns the practical implementation score, this indicator has also been assessed as only partially met. In fact, the State has brought into force a dedicated circular by the Ministry of Interior setting down specific models of Letters of Rights in order to give practical implementation to the new legal standards, but answers collected during the survey and the interviews of defense lawyers have revealed that none of them were aware of the existence of a dedicated circular by the Ministry of Interior; furthermore, none of them had ever seen before the specific model of Letters of Rights set

² On the grounds of what has been already considered in Part One.

down by the said administrative act. This clearly indicates that the provisions brought into force by the State to comply with the Directive did not impact as much as they should have on everyday practices.

Standard 2: Training

Indicator 2.1: Judges, prosecutors, police and judicial staff involved in criminal proceedings are trained with respect to the objectives of the Directive.	
Legal transposition score	0
Practical implementation score	0
OVERALL SCORE	0%

It has already been noted that the Italian State has not taken any measure to provide training to judges, prosecutors, police and judicial staff involved in criminal proceedings with respect to the objectives of the Directive and how this represents a critical omission.

This implies that this indicator has not been met and this area of the Directive is not implemented in Italy.

Standard 3: The right to information about rights in the criminal justice process

Indicator 3.1: Suspects and accused persons are provided with information about their rights in the criminal justice process.	
Legal transposition score	2
Practical implementation score	2
OVERALL SCORE	100%

In Level 1, *Indicator 3.1* – which evaluates the existence of provisions regulating the information about rights – has been evaluated as fully met, as the Italian law clearly states that suspects and accused persons are to be provided with information about their rights in the criminal justice process³. More specifically, suspects or accused persons are to be informed about: their right of access to a lawyer; their entitlement to free legal advice and the conditions of obtaining free legal advice; the right to be informed of the charge against them; the right to interpretation and translation; the right to remain silent.

The law also specifies at what point in time the suspect or accused persons is to be provided with information about their rights: this either happens at the time of the arrest or at the time of the first police interview. At the latest – in cases where the subject is neither arrested or interviewed by the police – the information about one’s rights coincides with the communication of the conclusion of the preliminary investigations. It must be here noted that whereas the equal treatment of suspects and accused persons is guaranteed by art. 61 of the Code of Criminal Procedure, in the heuristic phase of the penal proceedings – i.e., during the preliminary investigation – the right to information is *de facto* less

³ Art. 293, 294, 369 subsection 1-bis, 386, 391 of the Code of Criminal Procedure and art. 12 of Law 69/2005.

protected (as the suspect may not be informed up until the end of the preliminary investigation and thus, if the investigation is dismissed, he may not be informed at all).

The practical implementation of *Indicator 3.1* can also be positively evaluated as, according to data and answers collected through the survey and interviews of defense lawyers, almost all procedural rights as per the Directive are effectively granted in practice. In fact, when asked whether suspects or accused persons get informed about their right of access to a lawyer, about their entitlement to free legal advice and the conditions of obtaining free legal advice or about their right to remain silent, the huge majority of the respondents have agreed that this happens either always or in the majority of the cases. This apparently does not extend to the right to interpretation and translation, as here the majority of the respondents held that such information is provided to suspects or accused persons only in a minority of cases. The same picture emerges from interviews with lawyers, with all agreeing on a satisfactory practical implementation of the Standard but highlighting the criticality of the issue of the right to interpretation and translation⁴.

Indicator 3.2: Information about rights is provided in simple and accessible language, taking into account any needs of vulnerable suspects or accused persons	
Legal transposition score	1
Practical implementation score	1
OVERALL SCORE	50%

Indicator 3.2 evaluates the way in which the information about rights is provided, examining whether this happens in a simple and accessible language and by taking into account the specific needs of vulnerable suspects or accused persons. In Level 1, it has been noted how the Italian law specifies that the written communications informing the suspects or accused persons of their rights must have “a clear and accurate form” and, where the suspect or accused person does not understand the Italian language – must be “translated in a language which the suspect or accused person understands”⁵. It has also been highlighted how the *de facto* implementation of this indicator is strictly linked to the implementation of the right to interpretation and translation; such right is the subject of another specific Directive (2010/64/EU) which has also been adequately implemented in Italy through a Legislative Decree (32/2014). As no explicit requirements are set down for the cases in which the

⁴ These criticalities regarding the implementation of the right to interpretation and translation will be accounted for when evaluating Indicator 3.2., as well as when analysing the implementation of other specific standards (see, e.g., Standard 4).

⁵ Ex art. 293, 369bis and 386 of the Code of Criminal Procedure as well as to art. 12 Law 65/2009.

Two critical points are to be noted: the translation of the communication to foreigners who don't understand Italian is not necessarily provided in their mother tongue but rather through a vehicular language which the subject can grasp; furthermore, no explicit requirements are set down for the cases in which the communication is given orally

communication is given orally⁶ and no specific consideration is given to the specific needs of vulnerable subjects, though, the indicator has been evaluated as only partially met.

The clarity and accessibility of the language with which the information about right is provided in everyday practice appears to be a critical point: answers to the survey are split on the point (with one half of the respondents submitting that such information is given in the majority of cases and the other half maintaining that this happens only in a minority of cases) and opinions collected through the interviews highlight how this is often an issue in the context of criminal proceedings involving foreigners⁷. Not enough consideration appears to be given – and not surprisingly, considering the failure of the legislator to intervene on this point – to the specific vulnerabilities of suspects or accused persons⁸. Due to these criticalities, the indicator has been evaluated as only partially met.

Standard 4: The right to information about the nature of the charge (accusation).

Indicator 4.1: Suspects and accused persons are provided with information about the criminal act they are suspected or accused of having committed.	
Legal transposition score	2
Practical implementation score	2
OVERALL SCORE	100%

Indicator 4.1. evaluates whether suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed.

Its implementation in the legal transposition phase has here been positively evaluated as the previous analysis of the legal background has revealed how Italian law extensively regulates the provisions to suspects or accused persons of information about the criminal act they are suspect or accused of having committed. The law requires that the suspects or accused persons are advised of the criminal act they are suspect or accused of having committed⁹. There are some exceptions to this, though, as the communication of the registration in the criminal offences registry is excluded when the proceedings

⁶ That is, in all those cases where the written communication “is not promptly available” (notwithstanding the obligation to then provide a written communication as soon as possible) - ex art. 293 subsection 1-bis and 386 subsection 1-bis of the Code of Criminal Procedure,

⁷ Furthermore, the criticality of the issue of the right to interpretation and translation has been repeatedly raised by the defence lawyers who took part to this study, with regard to each and every standard involving a communication with the suspect or accused person. In other words, due to the lack of resources to ensure effective implementation of the right to interpretation and translation, the language barrier represents a consistent challenge in all proceedings involving foreigners.

As the implementation of the right to interpretation and translation is the subject of another Directive, the negative impact of many shortcomings has here been assessed only in the specific context of Indicator 3.2.

⁸ In fact, the majority of respondents to the survey holds that this does not happens at all or happens only in some cases. Answers collected through interviews have also been pessimistic on this point.

⁹ Art. 111 subsection 3, Constitution; art. 293, 335 subsection 3, 369 subsections 1 and 1-bis, 386, 415bis subsection 2, 429 and 516 Code of Criminal Procedure

concern the crimes listed in art. 407 subsection 2 letter A of the Code of Criminal Procedure¹⁰; the communication can also be postponed by three months where there are specific needs of secrecy connected to the nature of the investigation.

Suspects or accused persons are to be advised of the criminal act they are suspect or accused of having committed in different moments: for what concerns suspect persons, at the time of the registration of the offence in the criminal offences registry or at the time of the commission of the first act which requires the presence of the suspect's lawyer as well as at the time of the conclusion of the preliminary investigations; for what concerns the accused persons, at the time of the arrest and at the time of their commitment to trial as well as during the trial, if the charges are modified¹¹.

Suspects or accused persons also have to be advised of the legal classification of the offence: per constitutional provision¹², this should happen in the shortest time possible. According to the Code of Criminal Procedure, this means that suspects persons are to be informed at the time of the registration as well as the modification of the offence in the criminal offences registry or at the time of the commission of the first act which requires the presence of the suspects' lawyers as well as at the time of the conclusion of the preliminary investigations¹³; for what regards accused persons, the information on the legal classification of the offence is provided at the time of their commitment to trial as well as during the trial, if charges are modified¹⁴. The law does not require explicitly suspects or accused persons to be advised about the alleged nature of their participation in the offence, but the nature of the participation in the offence may understood by the accused persons at the time of their commitment to trial, as the decree notifying the commitment to trial must contain a clear enunciations of the facts, its specific circumstances and the norms to be applied¹⁵.

The practical implementation of this standard is graded as fully met, as both respondents to the survey and interviewed lawyers agree that suspects¹⁶ or accused persons are usually provided with sufficient information about the criminal act and its legal classification as well as about the nature of their alleged participation to such offence. It must nevertheless be noted, though, that lawyers have consistently highlighted how the implementation of the right of translation and interpretation represents a critical issue also with regard to this communication.

Indicator 4.2: Suspects and accused persons who are arrested or detained are informed of the

¹⁰ The crimes listed in art. 407 subsection 2 letter A include: national security crimes and terrorism and mafia crimes, as well as manslaughter, robbery, extortion, kidnapping, illegal production and sale of war weapons, some aggravated drugs crimes, exploitation of slavery and prostitution, human trafficking, paedo-pornography, paedophilia, rape; especially complicated investigations, involving a high number of suspects or various public prosecutors offices, are included as well.

¹¹ See respectively art. 335 and 369 subsections 1 and 1-bis, 415bis subsection 2, art. 293, 386, 429 and 516 Code of Criminal Procedure).

¹² Art. 111 subsection 3 of the Constitution.

¹³ Art. 335 subsection 3, art. 369 subsections 1 and 1bis, 415bis subsection 2.

¹⁴ Art. 429 and 516 for what regards accused persons.

¹⁵ art. 429 and 516 Code of Criminal Procedure.

¹⁶ One point must be noted: this information is only provided to formally accused persons or suspects who are subjected to interviews or precautionary measure, and not to "at loose" suspects.

reasons for their arrest or detention.	
Legal transposition score	2
Practical implementation score	2
OVERALL SCORE	100%

The reception of *Indicator 4.2* can be positively evaluated both with regard to its legal transposition and to its practical implementation: in fact, on the one hand, the law clearly requires that suspects or accused persons who are arrested be provided with the reasons for their arrest and detention¹⁷. On the other hand, answers and opinions collected through the survey and the interviews of defense lawyers unanimously agree on the fact that suspects and accused persons who are arrested or detained are usually informed of the reasons for their arrest or detention. The issue of the right of translation and translation nevertheless represents a criticality also with regards to this communication.

Standard 5: Provision of the Letter of Rights to suspects or accused persons who are arrested and/or detained.

Indicator 5.1: Suspects and accused persons are provided with a written Letter of Rights on arrest and/or detention.	
Legal transposition score	2
Practical implementation score	0
OVERALL SCORE	50%

The implementation of *Indicator 5.1* in the legal transposition phase has been here positively evaluated as the Italian law has been aptly modify – intervening on all concerned procedural norms – to require that suspects or accused persons are provided with such Letter. Most precisely, the law requires¹⁸ that suspects or accused persons are provided with such Letter¹⁹, but also sets down exceptions to this regime: in fact, as already noted, if the written communication – that is, the Letter of Rights – is not promptly available in a language which the subject understands the information can be given orally (notwithstanding the obligation to provide a written communication as soon as possible).

In addition to the legislative intervention, a dedicated administrative provision – that is, a Ministerial Circular setting down multi-lingual models of Letters of Rights – was brought forward.

That being said, it must nevertheless be noted that the legal discipline presents one critical point, i.e. the already mentioned prescription of an exception: when the written communication – that is, the Letter of Rights – is not promptly available in a language which the subject understands, the information can be given orally (notwithstanding the obligation to provide a written communication as soon as possible):

¹⁷ Art. 293 and 386 Code of Criminal Procedure.

¹⁸ Art. 293, 369bis and 386 Code of Criminal Procedure and art. 12 Law 69/2005.

¹⁹ See Annex A.

this may offer a dangerous (if temporary) loophole for non-compliance with the obligation of providing the Letter of Rights.

A really dismaying picture instead emerges when evaluating the practical implementation of this indicator: the overwhelming majority of the defense lawyers who took part to this study declare that such specific written communication is never provided. None of the participants were aware of the existence of a Ministerial Circular including a specific model of Letter of Rights nor had ever seen the said Letter of Rights before: “I’ve only seen such a thing in American TV-shows” has declared one of the lawyer; “I’ve never had knowledge of a Letter of Rights being provided to anyone” have repeated many others. Information about rights, they say, is rather provided through other the other procedural acts which are provided at the time of arrest or detention.

In other words, this crucial indicator may have been met in theory but appears to not be implemented at all in practice.

Indicator 5.2: The Letter of Rights is provided promptly, in a language and manner that the suspected or accused person can understand.	
Legal transposition score	1
Practical implementation score	0
OVERALL SCORE	25%

In Level 1, the implementation of *Indicator 5.2* has here been evaluated as only partially successful. In fact, the law requires that suspects or accused persons be provided with a translated Letter of Rights if they cannot understand the language of the member state in which the arrest took place but also sets down one exception – i.e., the possibility of providing through an oral communication (for which no explicit requirements are set down) if the Letter of Rights is not promptly available in a language which the suspect or accused person understands – which permits to easily postpone such prompt written communication²⁰. In addition, the law does not specify that suspect or accused persons should be given the time to read the Letter of Rights or be allowed to keep a copy of it, nor it requires that the Letter of Rights should be provided in any alternative formats for suspects or accused persons who need it (e.g., in braille for those who cannot see).

For what concerns its practical implementation, there is nothing else to be added to what already considered with regard to *Indicator 5.1*: notwithstanding what the law says in theory, no one has ever seen that Letter of Rights in practice.

Indicator 5.3: The Letter of Rights contains adequate information on all of the rights set out in Article 3 and 4 of the Directive.	
Legal transposition score	2

²⁰ Art. 293, 369-bis and 386 Code of Criminal Procedure.

Practical implementation score	0
OVERALL SCORE	50%

In the legal transposition phase, the Implementation of Indicator 5.3 has been fully met: the Italian law indeed construes the Letter of Rights as containing the information on almost all of these rights, with only one perfectly justifiable exception (that is: how to make a request for a provisional release or “bail” – as this institute does not exist in Italian criminal law)²¹.

For what regards the practical implementation phase, though, the same considerations conducted before stands and the Indicator is thus to be graded as not met.

Standard 6: Provision of the Letter of Rights in European Arrest Warrant proceedings.

Indicator 6.1: Suspects and accused persons, who are subject to a European Arrest Warrant, are provided with a copy of a Letter of Rights.	
Legal transposition score	2
Practical implementation score	0
OVERALL SCORE	50%

In the legal transposition phase, Indicator 6.1 has been fully implemented and the Italian law does indeed require that suspects and accused persons subjected to an EAW are provided with a written Letter of Rights ex art. 12 of Law 69/2005.

It must nevertheless highlighted how the intervention on Art. 12 of Law 65/2009 has been very minimal, as the legislator has (questionably) judged sufficient the pre-existent informative content of the norm and thus intervened only to specify that the required information must be passed on through a written communication (i.e., the Letter of Rights).

For what concerns the practical implementation stage, though, the same considerations conducted before with regard to delivery of the Letter of Rights in ordinary criminal proceedings stands²² and the indicator is thus to be graded as not met.

Indicator 6.2: The Letter of Rights is provided promptly, in a language and manner that the suspect or accused person can understand.	
Legal transposition score	1

²¹ Art. 293 and 386 Code of Criminal Procedure,

²² In other words, data collected from respondents to the survey and interviews appear to confirm that there is no practice of providing Letter of Rights in the context of EAW proceedings.

Practical implementation score	0
OVERALL SCORE	25%

The legal transposition of *Indicator 6.2* has been less than satisfactory: in fact, as a consequence of the minimal character of the legislative intervention, the Letter of Rights to be produced in the context of an European Arrest Warrant do not need to contain information about all of the rights mentioned in the Directive: such written communication indeed only includes the information on the possibility of the suspect or accused person to give his consent to be handed over to the issuing judicial authority and the rights to appoint a trusted lawyer, to be assisted by an interpreter, to inform the consular authorities and to be granted access to emergency medical care²³ and it does not need to contain information on how to contact a lawyer and how to obtain legal advice free of charge, on access to interpretation and translation nor on the right to have the EAW translated.

With regard to the practical implementation, there is nothing else to be added to what already considered before.

Standard 7: The right of access to the materials of the case.

Indicator 7.1: Suspects and accused persons who are arrested or detained, or their lawyers, receive documents relating to the case which are essential to challenging the lawfulness of the arrest or detention.	
Legal transposition score	1
Practical implementation score	1
OVERALL SCORE	50%

For what concerns the legal transposition of Standard 7 in its wholeness, it has already been observed that Legislative Decree 101/2014 did not include any provisions dedicated to the matter, as the Italian legislator has maintained that pre-existing procedural norms were already sufficient to ensure the right of access to the materials of the case. Considering that the law as it stands does indeed regulate extensively such right²⁴ but that the doctrine has often raised concerns over the lack of clarity of such

²³ See Annex A.

²⁴ For what concerns more specifically *Indicator 7.1.*, the law does indeed require that suspects or accused persons who are arrested or detained be provided with access to documents relating to the case: art. 116 of the Code of Criminal Procedure sets down a general right of access to acts relating to the case; other articles regulate the accessibility to acts and documents inherent to precautionary measure, the complete discovery of acts and documents inherent to the preliminary investigations after their conclusion and the accessibility to acts and documents inherent to the criminal process after their deposit (respectively ex art. 293, 386, 388 and 391; art. 451bis subsection 2; art. 416 subsection 2, 419 subsection 2, 447, 450 subsection 6, 454, 552 subsection 4 and 557).

discipline²⁵, a more organic legislative intervention could have been a wiser option and on this grounds the standard is evaluated as only partially met with regard to all its three sub-indicators.

The practical implementation of the Standard is quite satisfactory: the overwhelming majority of respondents agree that access to the materials of the case is granted always or at least in the majority of cases. Such materials may include documents, photographs, video and audio-recordings as well as informative by police officers and prosecutors. There is one critical issue, though: whereas the access to such materials is in theory free in the context of validation hearings, the extractions of copies remains at the expense of the concerned party (with the only exception of suspects or accused persons who benefit of legal aid). Furthermore, the prices of such extractions are determined by the Chancellery of each Court and can thus be quite arbitrary²⁶. This represent a significant obstacle to an effective access to all materials of the case which are essential to challenging the lawfulness of the arrest or detention and for this reason the indicator has been evaluated as only partially met.

Indicator 7.2: Suspects and accused persons are granted access to all material evidence in due time to exercise the rights of the defense.	
Legal transposition score	1
Practical implementation score	1
OVERALL SCORE	50%

The legal transposition score of 1 for all sub-indicators of Standard 7 has already been partially motivated. For what concerns more specifically *Indicator 7.2.*, it must here specified that the law generally requires those subject to be granted access to all the documents and the acts concerning the investigation but does not provide any further guidance or restrictions on what specific material evidence must be provided to the suspect²⁷. Anyway, neither the police nor other authorities have any discretion in selecting the material evidence (except for what concerns the phase of preliminary investigations). Access can be granted in different moments: during the preliminary investigations, at the time of the first interview²⁸; once the preliminary investigations are concluded, with the full disclosure of the relative documentation (so-called “public prosecution dossier”; ex art. 415bis of the Code of Criminal Procedure). There are some exceptions, though: firstly and foremost, in order to avoid prejudice to the preliminary investigations, in that phase it is possible to inform the suspects or accused persons exclusively of the probative elements against him, without disclosing their sources.

²⁵ As well as about the problems connected to the cumbersome character of the discipline of materials’ extraction (see below).

²⁶ One of the respondent put forward an interesting example: the Court of Bologna’s price-list still includes floppy-disks as a possible format for video extraction at less than 4 euros but charges as much as 258 euros for video extraction on CDs. As a consequence, defence lawyers in that district usually extract videos only in cases where they benefit of legal aid.

²⁷ Ex art. 65 and 415bis of the Code of Criminal Procedure.

²⁸ Ex art. 65 of the Code of Criminal Procedure.

Furthermore, these dispositions do not apply to direct and immediate judgments (ex art. 449 and 453 of the Code of Criminal Procedure respectively) nor before the justice of the peace and in trials against minors.

For what concerns more practical aspects, the implementation of *Indicator 7.2* appears to be quite satisfactory, with respondents agreeing on the fact that suspects and accused persons are usually granted access to material evidence in due time to exercise the rights of the defense. Nevertheless, respondents have highlighted how extraction procedures can be time-consuming and how this is especially problematic in the context of validation hearings and custodial interrogations. The indicator has thus been estimated as only partially accomplished.

Indicator 7.3: Access to the materials of the case can only be refused in limited circumstances.	
Legal transposition score	1
Practical implementation score	1
OVERALL SCORE	50%

The legal transposition score of 1 for all sub-indicators of Standard 7 has already been partially motivated. For what regards more specifically *Indicator 7.3.*, the law is not really specific on this point²⁹, and it only says that judiciary authorities in the member states have the right to refuse or delay access to the materials of the case where such access could prejudice the preliminary investigations. For what concerns the practical implementation of *Indicator 7.3*, answers submitted by the respondents highlight how the real problem in ensuring access to the materials of the case is that of the malfunctioning of Courts' chancelleries, denouncing a state of affairs in which such access is often *de facto* negated – not even by the competent judiciary authority on legitimate legal grounds, but by administrative judiciary staff because of chronic lack of resources and personnel. Accordingly, the indicator has been evaluated as only partially met.

Standard 8: Remedies

Indicator 8.1: Suspects and accused persons, or their lawyers, have the right to challenge the failure or refusal to provide information.	
Legal transposition score	2
Practical implementation score	1
OVERALL SCORE	75%

²⁹ Art. 65 of the Code of Criminal Procedure

The law clearly and adequately disciplines the right to challenge the failure or refusal to provide information and materials relevant to the case: in fact, under Italian law³⁰, the failure to notify the conclusion of the preliminary investigation and thus the accessibility of the disclosed documentation on the investigation determines a nullity of the commitment to trial of the accused. This nullity can be raised by the parts or *ex officio* by the judge before the sentence of the first instance Court. Furthermore³¹, if the judge, while complying with his verification obligation³², fails to provide or integrate the required information, his omission causes a general nullity of the act. Such nullity can be raised as an exception by the concerned part as well as by the judge *ex officio*, up until the judgment of the Court of first instance. In addition, the failure of the authorities to provide information with regard to someone who has been subjected to a precautionary measure implies that this person has a right to impugne the precautionary measure³³. Accordingly, the indicator has been evaluated as fully met. In practice, though, the implementation of the right appears to be less satisfactory, as respondents highlight a state of affairs in which access to information and materials is often negated not due to a formal decision of the competent judiciary authority but rather because of the malfunctioning of judiciary proceedings and offices, leaving them with no authorities to turn to in order to challenge such failure³⁴. Accordingly, the indicator has been evaluated as only partially met.

³⁰ Art. 416 subsection 1 and 552 subsection 2 of the Code of Criminal Procedure.

³¹ Ex art. 178 subsection 1 letter c, 180.

³² Set down by art. 294 subsection 1bis and 391 subsection 2.

³³ Ex art. 309 Code of Criminal Procedure.

³⁴ One respondent has highlighted the profound arbitrariness that is implicit in this state affairs, reporting that in order to context a refusal of access to materials by an administrative officer he had no other authority to turn to than the Carabinieri.

Final Remarks

Before concluding, it is necessary to further highlight a few key points.

Despite the fact that the implementation of the Directive has been evaluated as partially implemented, it is indeed to be stressed that the meeting of the standards has been more a product of pre-existing procedural guarantees than the consequence of a positive process of implementation. In fact, whereas the legal transposition of the Directive has been quite satisfactory – notwithstanding its minimal character and its failure to intervene on some of the standards – the same cannot be said with regard to its practical implementation.

The key standard imposed by the EU Directive – that is, the provision of the Letter of Rights – has blatantly remained mere theory, which obviously represents a grave criticality. Legal operators are not as prepared as they could and should be on the actual content and implications of the standards set down in the Directive and this is to be attributed to the total failure of the State to provide training on the matter to such subjects (in pursuance of standard 2 of the Directive). In addition, the problematic state of the implementation of the right to interpretation and translation – which is the subject of another, specific EU Directive – poses a consistent challenge also to the effective implementation of some key standards of the Directive on the right to information with regard to suspects or accused persons who do not speak Italian.

Conclusively, there is still much to be done to effectively ensure that the right to information in criminal proceedings is effectively granted in everyday practice. The starting points should undoubtedly be the provision of training to all concerned legal operators – starting with police officers and ending with criminal defense lawyers – and the concrete diffusion of the Letter of Rights as the principal vehicular instrument for providing information on rights to persons involved in criminal proceedings.

**ANNEX A (Models of Letter of Rights, ex Ministry of Interior Circular
N.559/D/007.15/022571)**

COMUNICAZIONE SCRITTA PER L'IMPUTATO
IN CASO DI ESECUZIONE DI CUSTODIA CAUTELARE - EX ART. 293 C.P.P. -
(da consegnare contestualmente a copia del provvedimento)

Il giorno _____ alle ore _____, negli Uffici del _____
noi sottoscritti Ufficiali e Agenti di polizia giudiziaria

diamo atto di aver proceduto alla consegna della presente comunicazione a _____, con la quale viene informato, ai sensi dell'art. 293 del c.p.p., di diritti e facoltà dell'imputato nei confronti del quale si esegue un'ordinanza di custodia cautelare:

- facoltà di nominare un difensore di fiducia e di essere ammesso al patrocinio a spese dello Stato nei casi previsti dalla legge;
- diritto di ottenere informazioni in merito all'accusa;
- diritto all'interprete ed alla traduzione di atti fondamentali;
- diritto di avvalersi della facoltà di non rispondere;
- diritto di accedere agli atti sui quali si fonda il provvedimento;
- diritto di informare le autorità consolari e di dare avviso ai familiari;
- diritto di accedere all'assistenza medica di urgenza;
- diritto di essere condotto davanti all'autorità giudiziaria non oltre cinque giorni dall'inizio dell'esecuzione, se la misura applicata è quella della custodia cautelare in carcere ovvero non oltre dieci giorni se la persona è sottoposta ad altra misura cautelare;
- diritto di comparire dinanzi al giudice per rendere l'interrogatorio, di impugnare l'ordinanza che dispone la misura cautelare e di richiederne la sostituzione o la revoca.

ENGLISH

List of the rights/powers of defendant who has been subjected to a pretrial detention order, as under section 293 of the criminal procedure code:

- *Power to appoint a trusted lawyer and to be granted access to legal aid, as envisaged by the law;*
- *Right to obtain information on the charges brought against the defendant;*
- *Right to have an interpreter and to have the relevant documents translated;*
- *Right to avail himself/herself of the power to remain silent;*
- *Right to be granted access to the documents on which the order is grounded;*
- *Right to inform the consular authorities and his/her family members;*
- *Right to be granted access to emergency medical care;*
- *Right to be brought before the judicial authority not later than five days from the beginning of the order enforcement if the measure is pre-trial detention in prison, and not later than ten days if the person is subjected to a different custody measure;*
- *Right to appear before the judge in order to be interviewed, to challenge the pre-trial detention order and to apply for its subrogation or revocation.*

Firma dei verbalizzanti

Firma dell'arrestato/fermato

COMUNICAZIONE SCRITTA PER L'ARRESTATO
IN ESECUZIONE DI MANDATO D'ARRESTO EUROPEO - EX ART. 12, L. 22.04.2005 N. 69 -
(da consegnare in copia)

Il giorno _____ alle ore _____, negli Uffici del _____
noi: sottoscritti Ufficiali e Agenti di polizia giudiziaria

diamo atto di aver proceduto alla consegna della presente comunicazione a _____, con la quale viene informato, ai sensi dell'art. 293 del c.p.p., di diritti e facoltà dell'arrestato, ai sensi dell'art. 12 della L. 22.04.2005 n. 69:

- possibilità di acconsentire alla propria consegna all'autorità giudiziaria emittente;
- facoltà di nominare un difensore di fiducia;
- diritto di essere assistito da un interprete;
- diritto di informare le autorità consolari;
- diritto di accedere all'assistenza medica di urgenza.

ENGLISH

List of the rights/powers of arrested person, as under section 12 of Act No. 69 of 22.04.2005 :

- Possibility to give his/her consent to be handed over to the issuing judicial authority;
- Right to appoint a trusted lawyer;
- Right to be assisted by an interpreter;
- Right to inform the consular authorities;
- Right to be granted access to emergency medical care.

Firma dei verbalizzanti

Firma dell'arrestato/fermato