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CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice

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Introduction

The Council of Bars and Law Societies of Europe (CCBE) welcomes the initiative of the European Commission (DG Justice) to establish the High-Level Forum on the Future of EU Criminal Justice. The CCBE recognises the significance of this Forum as an opportunity to contribute to shaping the long-term vision of EU criminal justice policy and ensuring that fundamental rights and procedural safeguards remain at the core of future developments.

The CCBE, representing European bars and law societies in their common interests before European and international institutions, has actively participated in the High-Level Forum meetings, as well as the preparatory technical meetings. These discussions addressed key issues such as procedural safeguards, judicial cooperation, substantive criminal law, European agencies and bodies and digitalisation in the justice system. As the European Commission prepares recommendations for legislative and non-legislative measures by the end of the year, the CCBE stresses the importance of a proactive role for the legal profession and remains committed to engaging constructively in this process.

This paper sets out the CCBE's views on a number of issues under discussion. In doing so, the CCBE aims to ensure that future EU criminal justice policies strike the right balance between effective law enforcement and the essential role that lawyers play in ensuring the rule of law and the protection of fundamental rights.

1. The need for a new Roadmap – "Justice systems built on confidence"

The Treaty of Lisbon (2009) made the EU Charter of Fundamental Rights (CFR) binding primary law. Human rights under the ECHR remain the minimum standards within the EU **(Art. 6(3) TEU; Arts. 52(3), 53 CFR)**. As a result, EU institutions and bodies – including the EPPO – as well as Member States when implementing EU law, are bound by the Charter. At the same time, the Lisbon Treaty enshrined the principle of mutual recognition of judicial decisions **(Arts. 67, 82 TFEU)**.

Mutual recognition can function only where there is mutual trust, and this trust requires minimum standards in criminal proceedings. The 2009 Roadmap improved trust, but its measures remain incomplete and insufficient to address evolving legal and technological realities.

The CCBE therefore strongly supports adopting a new EU Roadmap under Article 82 TFEU to progressively strengthen procedural safeguards. The step-by-step approach of the 2009 Roadmap has proven effective and should be replicated.

High procedural safeguards can ensure legally sound convictions, reduce wrongful convictions, and reinforce trust in cross-border cooperation. Safeguards are the cornerstone of a legitimate and effective criminal justice system.

The High-Level Forum discussions reveal an apparent reluctance among some Member States to extend safeguards, preferring to focus only on implementation of existing instruments. The CCBE stresses that rights protection must evolve with new challenges. Greater uniformity in proceedings strengthens cooperation and the Rule of Law, while divergences undermine public confidence and risk forum shopping in cross-border cases. The High-Level Forum is an important opportunity to address these gaps through new binding measures. Only EU legislation can guarantee consistent protection across all Member States and reinforce confidence in the European judicial area. While guidelines, training, and recommendations have value, experience shows they are not sufficient. For fundamental rights to be meaningful and accessible to all – legal professionals and the public – they must be enshrined in clear, binding law, not left to practice or custom.

2. Topics that should be considered for inclusion in a new Roadmap

Based on our practical experience, the CCBE has identified several topics that should be included in the new Roadmap. This is not a fully exhaustive analysis, as the points listed below are those that are considered to be most essential and most urgent to address.

The topics are presented in accordance with the issues which the Commission discussion papers have focused on up to present time and each topic contains an executive summary.

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Section 1. Judicial Cooperation and Mutual Recognition in Criminal Matters

Executive Summary

- **Introduction**:

  The CCBE supports EU initiatives to improve judicial cooperation tools such as the EAW, the EIO and e-Evidence, but highlights that efficiency must always take into account fundamental rights, proportionality, equality of arms, and legal certainty.

- **European Arrest Warrant (EAW)**

Key concerns:

- Fundamental rights protection remains inconsistent, with refusal grounds applied unevenly and requiring lengthy appeals that may prolong detention. CJEU rulings (e.g., Aranyosi, Puig Gordi) affirm that refusal is possible in cases of real, specific, and well-founded risk of fair trial breaches, subject to a two-step assessment.
- Proportionality is often overlooked, leading to unnecessary EAW issuance for minor or outdated offences, abuse of pre-trial detention, and premature warrants without sufficient evidence.
- Detention conditions require effective assurances and monitoring.
- Inefficient use of alternative instruments (EIO, ESO) results in over-reliance on EAWs.
- Schengen Information System alerts remain unreviewed, and compensation for wrongful detention lacks a harmonised EU framework.

Main recommendations:

1) Codify fundamental rights-based refusal grounds in line with CJEU jurisprudence.
2) Apply proportionality through higher offence thresholds, mandatory consideration of less intrusive measures, and time-based restrictions for old minor offences.
3) Strengthen ESO use to avoid excessive detention.
4) Establish systematic SIS alert reviews and a harmonised compensation regime.

- European Investigation Order (EIO)

Key concerns:

- Structural imbalance in favour of prosecution: inconsistent judicial oversight, limited defence remedies, lack of access to supporting material, and secrecy rules preventing defence participation in cross-border evidence gathering.
- Delays in execution undermine the right to proceedings within a reasonable time.
- Lack of legal remedies to challenge EIOs and absence of systematic notification to suspects.
- Complexity of navigating two legal systems without dual representation hampers defence effectiveness.
- Technical loopholes in cross-border surveillance and data interception risks forum shopping and circumvention of national safeguards.

Main recommendations:

1) Ensure defence access, participation, and post-execution challenge rights.
2) Introduce dual legal representation as in the EAW.
3) Enforce deadlines and disciplinary consequences for unjustified delays.

Amend the Directive to:

- Require compliance with both issuing and executing State standards for evidence use.
- Clarify legal consequences for unlawful interception or non-notification.
- Strengthen notification, oversight, and the principle of specialty.

- **Cooperation with Third Countries:** Effective mutual recognition requires mutual trust, which is rooted in shared procedural safeguards. Participation in EAW/EIO mechanisms should only be granted to States fully committed to EU fundamental rights and minimum procedural standards.

- **Overall position**: The CCBE supports modernising EU judicial cooperation instruments but insists that efficiency must not come at the expense of fundamental rights, equality of arms, and legal certainty. Legislative amendments should incorporate CJEU case law, strengthen proportionality and oversight, and close existing gaps that risk undermining mutual trust between Member States.

Introduction

As cross-border judicial cooperation in criminal matters continues to deepen within the EU, instruments such as the European Investigation Order (EIO), the European Arrest Warrant (EAW) and the E-evidence Regulation and Directive aim to facilitate swift and effective evidence gathering across Member States. However, from the perspective of defence lawyers and legal practitioners, these instruments raise serious concerns regarding procedural fairness, equality of arms, and the protection of fundamental rights, besides the new implementation of technical improvement to make them more effective and more in line with the rule of law principle.

1. European Arrest Warrant

The CCBE acknowledges the European Commission's initiative to strengthen the European Arrest Warrant (EAW) in its current mandate. While the EAW has been one of the EU's most effective tools for judicial cooperation in criminal matters, significant challenges remain. The CCBE has consistently highlighted concerns regarding fundamental rights, proportionality, and the practical application of the EAW.

The European Arrest Warrant (EAW), introduced after September 11th to enhance security and combat crime, paid limited attention to procedural safeguards. Over two decades later, it must evolve to reflect ECJ case law, the Stockholm Programme Roadmap on procedural rights, and the EU Charter of Fundamental Rights.

The main issues requiring reform are the following:

1.1. Lack of Definition in Offences under Article 2(2)

The lack of precise definitions for the 32 offences listed in **Article 2(2)** results in divergent interpretations and applications across Member States. For example, the legal definitions of "corruption," "computer-related crime," and "swindling" vary significantly among national jurisdictions. In addition, certain Member States interpret terrorism offences broadly enough to encompass even non-violent speech acts. Such discrepancies undermine legal certainty and the principle of mutual trust.

1.2. Grounds for Refusal and Fundamental Rights Concerns

Grounds for refusal based on fundamental rights are set out in the EAW Framework Decision, leading to case-by-case judicial interpretations. This provokes uncertainty. On the other hand, raising fundamental rights concerns often requires proceedings before higher courts, leaving the person subject to the EAW in detention for prolonged periods. To obviate the risk, member states should ensure that the national court with competence to deal with the European arrest warrant at first instance also has competence to deal with fundamental rights concerns - subject of course to a right to appeal.

It must be borne in mind that **article 1.3** of the EAW Framework Decision establishes that the Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and the fundamental legal principles enshrined in **Article 6** of the Treaty on European Union (TEU), including those contained in the Charter of Fundamental Rights and the ECHR.

Fundamental rights are in the core of EU criminal justice cooperation. **Article 2 TEU** enshrines the Union's values of human dignity, democracy, equality, the rule of law, and human rights, which all Member States are bound to uphold. The Charter of Fundamental Rights reinforces these obligations: **Article 51(1)** applies whenever Member States implement EU law; **Article 52(1)** requires that any limitation of rights must respect their essence and comply with proportionality; and **Article 52(3)** ensures consistency with the ECHR and the case law of the ECtHR. These provisions confirm that mutual recognition cannot operate in isolation from fundamental rights protection. This was clearly established by the case law of the CJEU starting with the well-known judgment of 5 April 2016 in the case of *Aranyosi and Căldăraru*, joined cases *C-404/15* and *C-659/15*, in the context of the European Arrest Warrant.

The CCBE supports the codification of fundamental rights-based refusals, in line with CJEU jurisprudence, to provide greater legal certainty.

In this regard, the CCBE wishes to draw the attention of stakeholders to the CJEU judgment of 31 January 2023, *Puig Gordi and Others*, *C-158/21*, concerning the EAWs issued by the

Spanish Supreme Court against certain Catalan independence supporters under investigation for well-known offences.

Leaving aside the specifics of the case and the precise answers to the referred preliminary questions, the key takeaway from this judgment lies in its treatment of the possibility of refusing execution of an EAW when there is a risk of violation of the right to a fair trial (**Article 47 CFR**) in the issuing Member State.

In this regard, the main conclusion that can be drawn from the ruling is that Union law - specifically, the EAW Framework Decision - does not preclude the refusal to execute a warrant on the grounds of a potential breach of the right to a fair trial in the issuing State (*paragraphs 72, 96, and 97*), though only in exceptional circumstances (*paragraph 117*). This refusal must follow a two-step assessment: **(a)** first, the executing judicial authority must determine whether there are objective, reliable, specific, and up-to-date elements indicating a real risk that the right to a fair trial will be breached in the issuing State (*paragraph 102*); and **(b)** that authority must verify - concretely and precisely - how the deficiencies identified in the first step may affect the proceedings to which the person subject to the EAW will be submitted. It must determine whether, considering the factual context in which the EAW was issued, there are substantial and well-founded reasons for believing that the person will be exposed to a real risk of breach of their right to a fair trial (*paragraph 106*), noting that the executing authority must request additional information from the issuing authority before making a final determination (*paragraph 136*).

In this respect, when assessing how a ground for refusal could be drafted concerning fundamental rights, the general adoption of the second step of the CJEU's test - as established also in other cases, as Minister for Justice and Equality v *LM*, *L and P, and X and Y* - can be used. This concerns breaches of the right to a fair trial due to a lack of judicial independence or violation of the right to a judge established by law in a given Member State. That is, there must be serious and well-founded reasons to believe that, in the specific case, the person surrendered to the issuing State will suffer an infringement of the fundamental rights enshrined in the Charter. If, after requesting additional information from the issuing authority, the executing authority remains unsatisfied, it must refuse to execute the arrest warrant. That decision must be subject to appeal in the executing State.

1.3. Implementation of the principle of Proportionality

In several judgements (*C-566/19, C-626/19, C-625/19, C-414/20, C-648/20*), the CJEU has confirmed that judicial cooperation must be subject to a proportionality review. While explicitly required in the European Investigation Order **(Art. 6(1)(a), Recitals 11–12)** and in the EU–UK Trade and Cooperation Agreement **(Art. 597),** proportionality is also recognised in the Commission's Handbook on the European Arrest Warrant.

The Court has consistently defined proportionality as a general principle of EU law (*C-413/99, par. 91*), requiring that any limitation on rights be both appropriate and necessary to achieve the objective pursued (*Joined Cases C-259/91, C-331/91 & C-332/91, par. 15; C-100/01, par. 43; C-33/07, par. 29; C-430/10, par. 40*).

In practice, however, proportionality is often overlooked in EAW proceedings by both issuing and executing authorities, as shown in the following examples (non-exhaustive):

(a) the issuing of an EAW for the purpose of investigation when the suspect is not at large (but just unaware that a criminal case is ongoing against him), instead of using a EIO.

(b) The abuse of pre-trial detention.

(c) The non-Respect of Time Limits and in the issuing of Multiple EAWs. Many Member States do not adhere to the time limits stipulated in the EAW Framework Decision, leading to unnecessary delays. The issuance of multiple EAWs for the same individual by different Member States creates confusion and legal uncertainty.

(d) The issuance of Non-Trial-Ready EAWs. EAWs are issued prematurely without sufficient evidence, resulting in long periods of pre-trial detention.

(e) The quality of translations remains problematic, with no mandatory deadlines for the transmission of EAWs in the correct language.

In our view (following GUERRERO PALOMARES[1]), the standard of proportionality derived from the Charter, from the case law of the CJEU, and from the constitutional traditions of the Member States could well be legislatively expressed in the following ways:

(a) Raising the threshold of the penal scope that may give rise to the processing of the EAW.

The threshold established in **Article 2(1)** of the EAW Framework Decision appears excessively low (a custodial sentence or detention order of a maximum duration of at least 12 months, or, where the person is sought to serve a sentence, the sentence must be at least four months).

Such a raising of thresholds accords with current progressive penal philosophy, including that shorter sentences should not lead to custody at all. Avoidable pre-trial detention also mitigates against persons who would otherwise wish to avail of their entitlement to seek an article 267 reference to the CJEU. There are those who choose not to do so because it would prolong a detention that is already in place even when the expedited procedure is invoked. This is undesirable in terms of the individual, but also in terms of the general development of a corpus of jurisprudence across the European Union on these important fundamental rights issues.

(b) The requirement to first resort to less intrusive mechanisms.

In this regard, when the warrant is issued for investigative purposes, the use of the EIO should be mandatory, unless there are well-founded reasons - based on objectively verifiable and intersubjectively acceptable data - that its use would lead to the flight of the person sought or the destruction of evidence.[2]

Moreover, for both EAWs issued for investigation and for execution, the use of pre-trial detention should be moderated - especially in the former case - by recourse to the European Supervision Order (Directive 2011/99 of 13 December).

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[1] GUERRERO PALOMARES, S. (2023), "La reforma de los instrumentos de reconocimiento mutuo a la luz de la jurisprudencia del TJUE", en *Proceso Penal Europeo: últimas tendencias, análisis y perspectivas,* HERNADEZ LOPEZ y LARO GONZÁLEZ (Coords), Aranzadi, Cizur Menor, p. 304-306.

[2] Countries like Denmark have not joined the EIO which means that the EAW will be used in all cases, which can create problems of proportionality.

(c) A minimum penalty threshold should be established in order to justify the imposition of pre-trial detention, especially when the warrant is issued for investigative purposes.

In addition, for the assessment of personal ties that may reduce the flight risk, the personal ties of an EU citizen in a Member State other than the one where they are arrested should be given the same weight as those in the arresting State. Only then would real effect be given to the right to free movement within the EU **(Article 3(2) TEU, Articles 21 TFEU and 45 of the Charter)**, and to the right to equality under **Articles 20** and **21** of the Charter.

(d) It would also not be unreasonable - though we acknowledge this is debatable - to project the principle of proportionality into a kind of time-based restriction for the use of the EAW.

That is, the interference with fundamental rights that typically accompanies an EAW, becomes even more problematic - disrupting the principle of proportionality - when the underlying criminal acts occurred long ago, even if within the statute of limitations. This is particularly important bearing in mind that in some member states there is no statute of limitations whatsoever in respect of certain types of crimes.

It is true that such a restriction could lead to impunity or even create an incentive to flee, in the hope that material prescription would occur sooner outside the country where the crime was committed. However, we believe this idea should not be outright dismissed, particularly in the case of minor offences. Not only due to the impact on fundamental rights of the individual subject to the orders, but also due to the considerable human and material resources required to activate the cooperation machinery - which is by no means simple.

Informal conversations with prosecutors from various Member States have revealed a shared sense of frustration when they are required to execute or request execution of mutual recognition instruments for minor offenses committed long ago - especially when the issuing State had allowed the proceedings to remain dormant for years for various (often unconvincing) reasons, only to reactivate them due to a change in the presiding judge, thereby triggering the entire logistical and financial burden of judicial cooperation mechanisms.

1.4. Detention Conditions

The *Aranyosi and Căldăraru* (*C-404/15 and C-659/15 PPU*) and *LM (C-216/18 PPU)* rulings require the executing authority to assess the human rights situation in the issuing State. Issuing States must provide effective assurances regarding detention conditions and fair trial rights, with a robust monitoring mechanism to ensure compliance.

1.5. Interaction with Other Judicial Cooperation Instruments

The EAW is often used in cases where alternative instruments, such as the European Investigation Order (EIO) or European Supervision Order (ESO), would be more appropriate.

The inefficacy of the ESO in ensuring proportional alternatives to detention needs to be addressed.

1.6. Schengen Information System (SIS) Alerts and Compensation for Unjustified Detention

There is no systematic review or reassessment of SIS alerts, leading to outdated or unjustified warrants remaining in the system.
On the other hand, compensation mechanisms for unjustified detention due to an EAW are inconsistent. It remains unclear whether the issuing or executing State should bear responsibility for compensation.

1.7. Harmonised framework for compensation for wrongful detention should be introduced

While **Article 5(5) ECHR** and **Article 6 of the Charter** provide a right to compensation for unlawful detention, there is no harmonised EU framework. Member States apply divergent rules regarding eligibility, calculation of damages, and procedural access. Some cover only limited financial loss, while others exclude legal costs or non-material damages. In cross-border cases, particularly under the EAW, uncertainty persists over whether responsibility lies with the issuing or the executing State. These divergences undermine equality of protection and mutual trust between Member States, and create legal uncertainty for individuals subject to judicial cooperation measures.

2. European Investigation Order (EIO)

The CCBE acknowledges the Commission's initiative to amend Directive 2014/41/EU on the European Investigation Order (EIO). In light of the tenth round of mutual evaluations and the recommendations of the High-Level Group on access to data, the CCBE considers it essential to address persistent legal and procedural shortcomings.

Reform of the EIO Directive is needed to strengthen legal certainty, uphold procedural safeguards, and prevent circumvention of national standards. Key issues concern defence participation in cross-border proceedings, interception requests, and cross-border surveillance.

The CCBE identifies two priorities for amendment: **(i)** measures to ensure equality of arms and effective defence rights, and **(ii)** technical improvements to enhance the instrument's effectiveness while safeguarding fundamental rights.

2.1. Structural Imbalance and Lack of Defence Access - Equality of Arms

While the EIO was introduced to simplify and standardise mutual recognition of evidence requests across the EU, its implementation reveals a system that largely favours prosecutorial authorities:

(a) Judicial oversight remains inconsistent across the EU.

In some jurisdictions, EIOs can be issued without any prior judicial review, raising concerns about unchecked investigative power. In *Gavanozov II (C-852/19)*, the CJEU confirmed that EIOs cannot lawfully be issued by non-judicial authorities without prior validation by a Court, judge, or prosecutor. Nonetheless, mutual evaluation reports show that in several Member States, certain administrative or investigative authorities may still issue EIOs with limited or no judicial control, undermining legal certainty and risking unchecked investigative powers.

(b) Execution of EIOs is often delayed or inconsistent, and the defence has limited legal remedies to challenge these delays or refusals.

If the current rules (**art. 12** of the EIO Directive) on this matter do impose a time limit of 120 days (30 days to decide to recognise the EIO and 90 more days to execute it), no penalty nor consequence is foreseen in case of non-respect of this time limitation.

The right to a fair trial also includes the principle of "reasonable time", by which everyone has the right to a hearing within a reasonable time. This principle includes the investigation phase.

In complex cases, where the issuance of EIO's is required, and in which the investigation by nature lasts a certain amount of time, in addition to delays in the execution of the EIO's, the judges on the merits have tendencies to not grant the violation of the principle of "reasonable time" under the pretext that the issuing authority does not have influence on the required authority and are not responsible for the delays in the execution in the executing member state.

An unreasonable delay should be addressed in two ways: **(i)** the establishment of disciplinary actions over the authority in charge, and **(ii)** expressly mention in the law that these delays are considered as a breach of the right to proceedings in reasonable time according to the Charter (leaving the Member State and their Courts to establish how the breach of the right would impact on their proceedings).

(c) Defence teams also frequently lack access to the underlying reasoning and materials supporting a EIO request, hindering their ability to challenge relevance or necessity.

Article 19 establishes confidentiality in the process to gather the evidence. In practice, this is leading to an *ex parte* proceeding in which the defendant cannot intervene.

This only makes sense when the case has been declared *ex parte* in accordance with national law, but not generally in all cases. A situation where the case is open to the defence and the lawyer of the suspect or accused may intervene in obtaining the evidence when it is a domestic gathering (for instance, proposing an extension of the items to gather, putting questions to witnesses or expert, challenging the decision, etc.) but, at the same time, cannot intervene (nor even be aware) in the cross-border gathering of evidence is not a logical situation.

This situation harms the full exercise of defence rights. The CCBE does not agree with the recommendation provided in the report of the 10th mutual round of evaluation (EIO), p. 91, when it provides that the issuing state's courts should not request the underlying order. In our view, they should always request it and make it known to the suspect who the subject of the measure is.

(d) Significant variation in national implementation results in legal uncertainty, reinforcing asymmetry in procedural rights.

In most Member States, there is no autonomous legal remedy against the issuance of an EIO. For example, in Germany, Austria and France, suspects cannot directly appeal an EIO, but only contest the admissibility of evidence or the underlying investigative act. In Spain and Italy limited remedies are available. This fragmentation creates legal uncertainty and undermines the right to an effective remedy under **Article 47** of the Charter. The latest findings uncovered by the press[3] in connection with the cryptographic service Anom show how important it is for those affected to be able to verify the evidence gathered. In this case, the FBI and investigating authorities even allegedly deceived the competent court in Lithuania, thereby obtaining the order necessary for the collection of evidence. This led to the prosecution and conviction of hundreds of users of this service, who were given no opportunity to have the evidence collection reviewed in their case or on the basis of the procedural rules applicable in their own country.

A solution to the lack of remedies and possibility to challenge EIO's would be to grant the defendant ex post the possibility to challenge the EIO in front of an independent jurisdiction in the issuing State (with the possibility of an appeal).

For this purpose, there should be an obligation for the issuing State to inform the concerned suspect and/or his/her lawyer as soon as the executing State has notified to the issuing State that the evidence requested in the EIO has been collected and is ready for sending, in order to provide the concerned suspect with the possibility within a specified legal deadline to file such a challenge in the issuing State.

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[3] https://www.faz.net/aktuell/politik/kryptodienst-anom-fbi-operation-beruht-auf-fragwuerdigem-beschluss-accg-110707726.html.

In practice, these shortcomings result in an erosion of the principle of equality of arms, especially in complex transnational cases.

(e) The need to understand and control both legal systems (from the issuing and from the requested States) undermine the chances of the defence.

Lawyers are not experts in all legal systems across the Union. This has an impact on the provision of an effective defence in EIO proceedings (as well as in the EAW). The solution is to implement the system of dual representation which is already in place for the EAW.

2.2. Technical improvement to enhance the cooperation provided by the EIO

As a technical improvement, the following issues have been identified:

(a) Cross-Border Interception of Telecommunications

Articles 30 and **31** of the EIO Directive should be amended to clarify the scope of investigative measures. While a broad interpretation is consistent with the Directive's aim of creating a uniform framework for cross-border investigations, recent cases (e.g. *Encrochat)* highlight concerns about the gathering and transmission of evidence.

In particular, the current reading of **Article 6(b)** allows the transfer of evidence already held by an executing State without requiring compliance with the issuing State's substantive safeguards. This creates a risk of forum shopping by authorities seeking jurisdictions with weaker protections.

To address this, the Directive should be revised to explicitly require that transmitted evidence meet the legal standards of both the issuing and the executing State.

(b) Addressing Ambiguities in Cross-Border Surveillance and Data Interception

Article 31 of the EIO Directive should be amended to remove existing legal uncertainties around the transfer and use of evidence obtained without technical assistance from the executing State. Three specific reforms are necessary:

i. **Notification requirement:** Where an intercepting State fails to notify the concerned Member State, or where unlawful consent is given, the Directive should provide clear legal consequences, including the inadmissibility of such evidence.
ii. **Ban on circumvention:** To reflect ECJ case law, the Directive should explicitly state that evidence gathered in violation of Article 31 cannot be transferred or used in subsequent proceedings.
iii. **Enhanced procedural safeguards:** Stronger procedural protections should be introduced, including mandatory notification obligations and robust oversight mechanisms for all cross-border surveillance activities.

(c) Set out the principle of specialty.

In line with what the 10th evaluation establishes (p. 43 and 44), this principle should be expressly set out in the Directive.

3. Cooperation with Third European countries

Both existing and future instruments ensuring procedural safeguards are essential as a basis for mutual trust and confidence which is the core basis for mutual recognition as presupposed by **TFEU art 82**.

Currently, several member states and third countries are participating in the EAW without being committed to all the instruments setting out common minimum standards regarding procedural safeguards. Regarding third countries, they are not bound by the Charter on Fundamental rights.

In order to achieve the overall goal of confidence and mutual trust that is a prerequisite for effective cross-border cooperation in criminal matters, the CCBE stresses the necessity of demanding that all countries that shall benefit from participation in operative instruments

as the EAW and EIO must commit to all of the EU instruments regarding procedural safeguards and fundamental rights.

In addition, third countries are prevented from submitting a preliminary request to the CJEU. This entails a risk of inconsistent case law and may impact mutual trust.

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Section 2. Procedural safeguards in criminal proceedings

Executive Summary

- **Introduction:** Procedural safeguards are the foundation of the European Criminal Justice Area. Without harmonised standards, disparities erode fair-trial guarantees, public confidence, and mutual recognition. The CCBE identifies the following six urgent priorities for EU legislation.
- **Pre-trial detention & detention conditions:** Make pre-trial detention a last resort: strict proportionality, clear maximum time limits, and wider use of alternatives (ESO, electronic monitoring). The adoption of binding EU standards on humane conditions and independent inspections (including visiting rights to the Heads of Bars and Law Societies) is essential, as well as the establishment of an EU prevention mechanism with powers for unannounced checks.
- **Exclusionary rules:** Establish EU-wide minimum rules on unlawfully obtained evidence: lex loci with verification, absolute exclusion for torture/ill-treatment and core rights breaches, and proportionality-based tests for other interferences - to protect **Articles 6 ECHR** and **47 CFR** rights.
- **Legal Professional Privilege:** Enact binding EU safeguards in order to ensure strong, uniform protection of LPP in criminal cases, including inadmissibility of material obtained in breach of privilege; privilege must be absolute in defence matters.
- **Lawyer at searches/seizures:** Amend Directive 2013/48/EU to guarantee a suspect's right to a lawyer's presence during searches and seizures, with procedural safeguards to prevent self-incrimination and evidence manipulation.
- **Defence investigations:** Member States should provide a EU legal framework for defence-led investigations**,** enabling defence-led investigations (including cross-border), ensuring equality of arms, admissibility of defence-gathered evidence, and efficiency gains through earlier case resolution.
- **Freezing of Assets and confiscation:** Harmonise maximum durations for freezing orders and introduce minimum (including flat-rate compensation) compensation

standards when property is not confiscated, to ensure proportionality and protect property rights.

- **Conflicts of jurisdiction:** Regulation 2009/949 does not proportionate legal certainty which is a key issue in any criminal case. The CCBE proposes the adoption of a new Regulation that would, in the same way that Regulation 1215/2012 achieves certainty in civil and commercial matters, avoid any forum shopping, lack of determination and breach of the *ne bis in idem* principle.
- **Conclusion:** The CCBE urges the European Commission to move beyond soft law: adopt binding measures under Article 82 TFEU to set minimum standards, strengthen oversight, and ensure consistent protection of procedural rights across the Union.

Introduction

Procedural safeguards are fundamental to the construction of the European Criminal Justice Area. They ensure respect for fundamental rights, the rule of law, and maintain the mutual trust essential for cross-border cooperation. Without robust and harmonised safeguards, disparities between Member States' legal systems risk undermining fair trial guarantees, eroding public confidence, and weakening mutual recognition instruments such as the European Arrest Warrant. The CCBE has therefore identified urgent priorities where EU legislative action is needed to close protection gaps, address systemic deficiencies, and promote a coherent standard of justice across the Union. The CCBE has identified the following areas where legislative actions and improvements are urgent.

1. EU Rules on Pre-Trial Detention and Material Detention Conditions

Introduction

The CCBE welcomes the discussion on EU rules concerning / related to pre-trial detention and detention conditions. These issues directly affect fundamental rights, including the presumption of innocence, human dignity, and the right to a fair trial. Given prison overcrowding and disparities in detention conditions across Member States, the CCBE believes that further action at EU level is necessary to enhance safeguards and improve detention conditions.

EU competence in relation to conditions of detention

The rules governing the Union's competence in criminal proceedings are set out in **Article 82** of the Treaty on the Functioning of the European Union. The Union has shared competence in two cases:

(a) to improve cooperation between Member States in criminal matters, through measures aimed at preventing conflicts of jurisdiction, supporting the training of judicial officials, and facilitating cooperation between judicial authorities or between prosecuting authorities **(Article 82(1) TFEU)**,

(b) to facilitate the mutual recognition of judicial decisions in the three areas exhaustively listed of mutual admissibility of evidence, rights of persons subject to proceedings, and rights of victims of crime **(Article 82(2) TFEU)**.

It is under **Article 82(2) TFEU** that the EU's competence on detention conditions can be considered. Detention standards directly affect mutual recognition, particularly the execution of European Arrest Warrants. The adoption of Directive 2016/800 on safeguards for children illustrates this: as **Recital 68** explains, common minimum standards could not be sufficiently achieved by Member States alone, but could be better attained at Union level in line with the principle of subsidiarity. The Directive also stressed compliance with proportionality, ensuring that measures do not go beyond what is necessary to achieve their objectives.

Need for Further EU Action

The CCBE acknowledges the European Commission's efforts through the 2022 Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions. However, as non-binding measures, these recommendations have limited effect in addressing systemic problems with pre-trial detention and prison conditions. The CCBE identifies the following key concerns:

(a) The vague formulation of many of the recommendations, leading to inconsistent implementation across Member States.

(b) A lack of transparency and reliable data on detention conditions, making it difficult to assess compliance and address deficiencies effectively.

(c) Reports from legal practitioners and detainees indicating failures in medical care, inadequate nutrition, and poor living conditions, even in Member States with relatively good detention standards.

The protection afforded by the European Court of Human Rights in relation to inhumane detention, which the CCBE welcomes and recognises, is insufficient to resolve the situation. There are no harmonised standards for implementing the ECHR within the EU, resulting in significant disparities among Member States' prison systems despite universal accession. Repetitive violations before the ECtHR show that structural reforms in Member States are lacking. Outcomes depend mostly on national authorities' interpretation and wide margins of appreciation. Moreover, the right of application to appeal to the ECHR alone does not guarantee effective compliance with Convention obligations.

Finally, it is clear that prison overcrowding undermines the principle of mutual trust between Member States that their respective legal systems are capable of providing equivalent and effective protection of fundamental rights. The Court of Justice of the European Union has clearly established that a Member State may refuse to execute a European arrest warrant, an instrument symbolising that trust, on the grounds of a risk of inhuman detention in the judgments *Aranyosi* and *Căldăraru* (*C-404/15*), *Dorobantu* (*C-128/18*) and *Breian* (*C-318/24*). This problem undermines the effectiveness of mutual recognition and the entire system of EU criminal cooperation.

The CCBE, therefore, supports further EU-level action, particularly in establishing binding minimum standards and enhancing oversight mechanisms in the following priority areas:

(a) Reducing the Use of Pre-Trial Detention

Member States should impose pre-trial detention only where strictly necessary and as a measure of last resort. To achieve this goal the legislation should set out clear rules that implement the principle of proportionality, for example:

i. Requiring a minimum threshold penalty for detention. Basing detention on sufficient grounds beyond mere suspicion (*Randonjic and Romic v. Serbia*, ECtHR, 2023). Requiring sufficient grounds to believe that the suspect will in any way, harm the proceedings (fleeing and damage evidence) or the alleged victim. Using sufficient grounds as a basis for the detention beyond mere suspicion (*Randonjic and Romic v. Serbia*, ECtHR, 2023).

ii. Regarding the risk of fleeing, ties in any Member State should be considered equally in assessing flight risk. Regarding damaging evidence, this should be distinguished from the right to remain silent and to not incriminate oneself.

(b) Setting out maximum time limits for pre-trial detention.

ECtHR case law makes clear that reasonable suspicion alone cannot justify continued detention beyond the initial arrest. Judicial authorities must provide concrete, case-specific reasons such as risk of flight, interference with evidence or witnesses, risk of reoffending, or risk of public disorder. These grounds must be duly substantiated and cannot rely on abstract or stereotyped reasoning (Radomir & Romić v. Serbia; Buzadji v. Moldova; Merabishvili v. Georgia). This reinforces the need for EU legislation to establish clear maximum time limits for pre-trial detention.

(c) Implementation of alternatives to the pre-trial detention, such as electronic monitoring and conditional release mechanisms, or even bail.

(d) Application of the **Framework Decision 2009/829/JHA** on the European Supervision Order, which allows supervision in the defendant's Member State of residence instead of pre-trial detention abroad.

(e) Avoid the overuse of pre-trial detention in the EAW proceedings, where the CCBE has detected an overuse of that measure. Legislation should ensure that pre-trial detention in EAW for investigative purposes is a measure of last resort, above all if the suspect has no notice of the proceeding ongoing against him.

There are multiples examples of persons in pre-trial detention in the EAW for investigative purposes that would have been appeared voluntarily if they had known that there were proceeding against them.

(f) Establishing minimum conditions in detention centres.

Attention should be placed on matters including contact with family, legal assistance, healthcare, hygiene and sanitary conditions, nutrition, size of detention cells, and other essential aspects related with human dignity (including clothing or religious services).

In addition, the CCBE believes that, as is currently the case in France and in Belgium, the Heads of Bars and Law Societies should have the right to inspect prisons and all places where people are deprived of their liberty, on the same basis as the existing right enjoyed by certain members of parliament, judges and other independent authorities.

The idea of granting visiting rights to the Heads of Bars and Law Societies and their delegates stems from the observation that the legal profession, despite being entrusted with the protection of fundamental rights and freedoms inherent to its status, was unable to protect these rights in the context of the enforcement of measures depriving individuals of their liberty, because they were unable to observe firsthand what was happening inside prisons (with the exception of disciplinary hearings and visiting rooms) or in any other place of deprivation of liberty. By virtue of their office and authority, the Heads of Bars and Law Societies embodies the essential missions of the legal profession: in particular in its dimensions of defence, protection of fundamental rights and individual freedoms, the rule of law, and the fight against inhuman and degrading treatment, whether the person concerned is free, an adult or a minor, detained, hospitalized, held in custody, or in police custody.

Allowing the Heads of Bars and Law Societies and their delegates to visit places of deprivation of liberty amounts to granting the representative of the legal profession the right to observe, alert, and report on the situations encountered as well as participate in a dialogue with the public authorities and administrations in charge of places of deprivation of liberty in order to improve the rule of law and denounce degrading situations that undermine the confidence of litigants and the image of justice.

In addition, the establishment of a European prevention mechanism, based on the functioning of the National Preventive Mechanisms[4] (independence, immunity, free access to places of detention), is a possible option for the Union to effectively monitor detention conditions in member states. A European prevention mechanism would also have a distinct role from the Committee for the Prevention of Torture (CPT) because, unlike the CPT, it

[4] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 18, 2002.

would be able to carry out unannounced inspections. It should be noted that the CPT is required to give prior notice of its visits to the Member State concerned.

Conclusion

The CCBE emphasises that any EU action must respect national traditions while ensuring effective protection of fundamental rights. Given the severity of prison overcrowding and inadequate detention conditions, the CCBE urges the European Commission to move beyond non-binding recommendations and consider legislative measures to establish binding minimum standards. Additionally, the EU should promote wider use of alternatives to pre-trial detention and strengthen oversight mechanisms to ensure compliance and accountability. The CCBE remains committed to contributing to this important discussion and ensuring that the rights of detainees are fully upheld across the EU

2. Lack of EU-Wide Minimum Exclusionary Standards: A Critical Gap

A major gap in EU criminal justice is the absence of harmonised rules on the admissibility or exclusion of unlawfully obtained evidence.[5] The shortcomings arise not only regarding the admissibility of cross-border evidence, but also the need to provide for adequate protection of the defendants' rights in domestic proceedings when faced with incriminating evidence obtained abroad. Problems regarding this area are now in the spotlight (*Encrochat, Sky ECC and other cases*).

Despite explicit competence under **Article 82(2)(a) TFEU**, no EU legislative framework exists.

[5] See, for example, GARAMVOLGYI, B., LIGETI, K., ONDREJOVÁ, A. and VON GALEN, M.(2020), "Admissibility of Evidence in Criminal Proceedings in the EU", in *EUROCRIM,* nº 3/2020, pp. 201-208.

In the actual context, where the evidence circulates amongst Member States:

(a) There is no EU-wide obligation for courts to exclude evidence obtained in breach of fundamental rights, even where such breaches are serious (e.g., surveillance without a judicial warrant, violation of legal privilege).

(b) Some Member States apply strict exclusionary rules, while others do not, leading to legal uncertainty in cross-border cases.

(c) Courts may admit evidence obtained abroad (lex loci) even if it would be inadmissible under domestic law (non-enquiry principle), eroding procedural fairness.

(d) Defence lawyers lack few effective remedies to challenge the admissibility of evidence obtained through cross-border cooperation.

Without minimum exclusionary standards, the right to a fair trial under **Article 6 ECHR** and **Article 47 of the EU Charter** remains inconsistently protected. This undermines the effectiveness of mutual recognition and creates serious risks of rights violations and unjust outcomes.

We acknowledge that achieving a common standard for this is challenging, but not impossible.

It is helpful to make reference to the proposal launched by the European Law Institute (ELI)[6], led by Lorena BACHAMAIR WINTER[7].

[6] The text of the ELI Proposal is available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Proposal_for_a_Directive_on_Mutual_Admissibility_of_Evidence_and_Electronic_Evidence_in_Criminal_Proceedings_in_the_EU.pdf

[7] An explanation about the proposal can be found in BACHMAIER WINTER, L. (2024), "The Quest for Evidentiary Rules in EU Cross-Border Criminal Proceedings: Electronic Evidence, Efficiency and Fair Trial Rights", in *Admissibility of Evidence in EU Cross-Border Criminal Proceedings. Electronic evidence, Efficiency and Fair Trial Rights,* BACHMAIER WINTER and SALAMI (Edts), Hart, Oxford, p. 1 y ss. Same author (2023), "Mutual Admissibility of Evidence and Electronic Evidence in the EU. A New Try for European Minimum Rules in Criminal Proceeding", EUROCRIM, 2/2023, p. 223-229.

The ELI proposal establishes compliance with *lex loci regit actum* as the main principle (**Art. 4 ELI Proposal**), but the authorities in the forum State and the defence could verify if the evidence gathered abroad has in fact been obtained in accordance with the *lex loci*. This principle will have one exception: cases in which the use of such evidence would infringe fundamental constitutional principles of the forum State **(Art. 4 (1) ELI Proposal)**. For the ELI proposal, mutual recognition is not equivalent to the principle of non-inquiry.

On the other hand, as the ECtHR has already established that evidence obtained by means of torture or ill-treatment, in violation of the right against self-incrimination, and by deception are considered grounds for the absolute inadmissibility of evidence **(Art. 5 ELI Proposal)**.

Art. 6 of the ELI Proposal introduces non-absolute exclusionary rules, requiring Member States to deem inadmissible evidence such as: **(i)** self-incriminating statements made without a lawyer unless confirmed at trial, **(ii)** communications with defence counsel obtained in breach of confidentiality, and **(iii)** communications with clergy obtained in violation of secrecy. Limited exceptions apply (e.g. if the confidant is implicated in the offence), and the rules extend to administrative proceedings. As Bachmaier Winter notes, these provisions largely reinforce safeguards already present in most national criminal codes, particularly regarding lawyer–client privilege.

The ELI Proposal offers a pragmatic approach, combining absolute exclusions with proportionality-based admissibility. Building on this, the CCBE stresses that proportionality remains the central issue. The CJEU has consistently affirmed proportionality as a general principle of EU law (*C-413/99*), requiring that any restriction of rights must be appropriate, necessary, and not exceed what is needed to achieve a legitimate objective *(C-259/91; C-100/01; C-33/07; C-430/10)*.
Drawing on this doctrine, as well as national models such as Spanish legislation and ALEXY's proportionality test[8], the CCBE suggests that a common EU standard for admissibility of evidence should follow these principles.

Evidence gathering that affects human rights differently than that established in **articles 2, 3 and 5 of ECHR**, would be admissible only if the following criteria are met.

[8] ALEXY, R. (1985), *Theorie der Grundrechte,* Nomos, Baden-Baden, p. 100-104.

(a) The investigative measure must be established in law.

(b) Unless grave and specific risks exist for persons, goods or for the proceedings, the investigatory measure could only be ordered by a judicial authority (including Public Prosecutor). In those cases, the non-judicial authority who ordered the measure should communicate it to the judicial authority in less than 24 hours, and this should be ratified by the judicial authority.

(c) The investigative measure granted must comply with the following principles:

(i) Specificity: linked to a defined crime and individual
(ii) Suitability: clearly defined in scope, duration and objective.
(iii) Exceptionality: used only when less intrusive measures are unavailable.
(iv) Necessity: indispensable for establishing facts, identifying suspects, or locating evidence.
(v) Proportionality as itself: rights restrictions must not outweigh the public interest in prosecuting serious crime.

Any other solution, as for instance the admissibility "*under certain conditions or accommodations*" (balancing test) of evidences obtained outside of the terms of the law or in violation of it, may inevitably dilute the Rule of law, despite all the good intentions of the promotors of such alternative approaches, and generate inappropriate legal uncertainty due to a discretionary outcome by the Courts between admissible and inadmissible illicitly obtained evidence.

This gap in interpretations of admissibility of evidence throughout the member states is set to widen even further in the future with the variety of types of evidence which may be brought forward by the parties to the procedure (i.e. electronic data).

3. Legal Professional Privilege/professional secrecy

Despite the fact that all Member States recognise the importance of Legal Professional Privilege and Confidentiality, the system of its protection, the extension of it and the way of application varies significantly (BACHMAIER WINTER[9]).

As stated in the first judgment of the Court of Justice that addressed this issue - *AM&S EUROPE v Commission of the European Communities*, May 18, 1982 - the principle of confidentiality in the relationship between lawyer and client is one of the general principles of EU law, inspired by the common constitutional traditions of the Member States.

This protection has been reinforced in later case law (e.g. *C-694/20; C-432/23*), particularly following the EU Charter, notably **Articles 7** and **47**(e.g. *C-305/05, C-694/20, C-432/23*). In the absence of specific EU legislation, the scope of this protection remains primarily governed by national law, but is guaranteed under the EU Charter, interpreted in line with the ECHR (**Art. 52(3) CFR**). The ECtHR has likewise recognised that lawyer–client confidentiality falls within **Article 8 ECHR** and is integral to the right to a fair trial (e.g. *Michaud v France; Altay v Turkey; Golder v UK*).

This opens the door to much discretion, and ultimately, highlights the lack of EU legislation to harmonise or approximate national laws, which would provide legal certainty in cross-border evidence exchange. The precarious state of lawyer-client communication confidentiality in some Member States is clearly and dramatically evident, for example, in the ECtHR judgment in case *Kulák v. Slovakia*, 3rd April 2025.

The Convention on the Protection of the Profession of Lawyer, adopted in May 2025 by the Council of Europe and currently open for signature, refers to professional secrecy and confidentiality in general terms, subject to necessary legal limitations in a democratic society.[10]

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[9] BACHMAIER WINTER, L. (2020), "A comparative View of the Right to Counsel and the Protection of Attorney-Client Privilege Communications", in *The Right to Counsel and the Protection of Attorney-Client Privilege in Criminal Proceedings. A comparative View,* BACHMAIER, THAMAN and LYNN (Ed.), Springer, Cham, p. 37-69.

[10] Art 6 of the Council of Europe Convention for the Protection of the Profession of Lawyer provides :

It is suggested that the EU minimises any restrictions ("*necessary in a democratic society*") in order to strengthen and ensure the application of the principle by establishing minimum standards in legally binding legislation according to **Art 82 TFEU**, where the following measures be agreed:

(a) Rules regarding investigative authorities, such as searches of law offices, phone tapping, or technological surveillance.

(b) A rule of inadmissibility for evidence obtained in violation of professional secrecy.

(c) Specific rules safeguarding lawyers' status as witnesses or even as defendants. As witnesses, they must not be forced to disclose client information; as defendants, any indictment must be solid, as lawyers have been charged on weak grounds just to circumvent secrecy protections.

These measures should be based on the following principles (*elaborated by Holger MATT*):

a) **Principle One – Strong legal protection for privilege**: A Lawyer's duty of confidentiality must correspond with the provision of strong legal protection for this privilege, including the right to refuse to testify and the exclusion of privileged material from supervision, search, and seizure.

b) **Principle Two** – **Confidentiality must be absolute for both client** (when the client is subject to such confidentiality under national law) **and lawyer**: In defence cases protected by Article 6 ECHR, 47 CFR and Directives EU 2013/48 and 2016/343, confidentiality must be absolute for both client and lawyer, without exceptions for

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Par 3: Parties shall ensure that lawyers: A) can provide their clients or prospective clients with legal advice in private when meeting them in person; B) can communicate confidentially with their clients or prospective clients, by whatever means and in whatever form such communication may take place; C) are not required to disclose, surrender or give evidence regarding any information or material received, whether directly or indirectly, from clients or prospective clients, as well as any exchanges with them, and any material prepared in connection with either those exchanges or the conduct of legal proceedings on their behalf; Par 4: No restrictions shall be placed on the exercise of the rights established under paragraphs 1, 2 and 3 of this article, other than those prescribed by law and which are necessary in a democratic society.

imprisoned clients; illegally obtained privileged evidence must be excluded from use.

c) **Principle Three – Limits on Client Waiver**: Clients may waive privilege (when the client is subject to such confidentiality under national law), but not core privileged elements (e.g. lawyers' internal notes, undisclosed communications).

d) **Principle Four** – **Independence & Procedural Safeguards**: Lawyers' independence demands stronger privileges, sometimes beyond client control, with strict procedural safeguards (specialised judges, sealing before review, bar presence, filtering, deletion of non-relevant data).

e) **Principle Five** – **Client's Right to Silence**: All clients, regardless of their role in proceedings, may refuse to testify on privileged matters; such refusal must be matched by protection of related documents/data from state intrusion.

f) **Principle Six** – **Full Protection when acting as lawyers**: When performing legal duties, lawyers and their assistants enjoy full privilege protection, with exclusion of illegally obtained evidence and required cautioning of all persons bound by confidentiality.

4. Establishment of Common Minimum Rules for a lawyer to assist their client during search and seizure operation.

An effective and efficient defence also rests on the ability for a lawyer to assist their client – individuals or entities – during searches and seizure operations.

Directive 2013/48/EU provides for the right of suspects and accused persons to meet in private and communicate with their lawyer, including prior to questioning by the police or by another law enforcement or judicial authority (**Article 3(3)(a)**) and the right for their lawyer to be present and participate effectively when questioned (**Article 3(3)(b)**).

The right of access to a lawyer to investigative or evidence-gathering measures (which the suspect or accused person is required or permitted to attend) other than questioning by the police or another law enforcement authority is partially covered by **Directive 2013/48/EU** - but not correctly implemented by all Member States.

In accordance with the Directive (**Article 3(3)(c)**), the list of investigative or evidence-gathering measures during which suspects and accused person have 'as a minimum, the right for their lawyer to attend' comprises: **(a)** identity parades; **(b)** confrontations; and **(c)** reconstructions of the scene of a crime. With the wording 'as a minimum' the EU legislator indicated that this list is not exhaustive.

However, many Member States strictly apply these provisions and do not allow a lawyer to attend searches and seizures.

Some Member States are strongly opposed to such an interpretation of **Directive 2013/48/EU** and to the right to be assisted by a lawyer during house searches. To make their point, they argue that it would not be possible, nor recommended, to request from the investigators to delay the search until the lawyer may come on site. However, that difficulty could be overcome by providing that:

(a) the lawyer known to the proceedings must be informed of the search measure when it is about to be implemented,

(b) if the person concerned does not (yet) have a lawyer, he or she can request the assistance of one when the search is carried out (either directly or through the investigators); this right to assistance of a lawyer during the search must be notified at the start of the measure.

(c) search operations may begin without delay, even if the lawyer has not yet arrived at the search site.

The lack of right for the lawyer (of the suspected or accused person) to attend house searches is seriously prejudicial to the rights of the defence due to the risk of accidental or enforced self-incrimination, and possible irregularities or manipulation of proofs to the detriment of the rights of the accused.

The search phase constitutes a period during which the suspect is detained and/or under the control of the police, which sometimes is not subject to any control by the public prosecutor. Consequently, no verification of the notification of rights to the suspect is carried out, even though this notification must take place, and in accordance with Directive 2012/13/EU on the right to information in criminal proceedings, '*when these rights become applicable in the course of the proceedings and in time to enable their effective exercise'* , which includes notification of the right to remain silent. The presence of a lawyer is necessary to verify compliance with this notification.

The counter-argument that the search phase does not constitute a hearing and therefore does not require notification of the right to remain silent is mistaken, as practice shows. Some Member States, including France, illustrate this in their legislation. **Article 56** of the French Code of Criminal Procedure for instance states that *'if they are likely to provide information on the objects, documents and computer data seized, the persons present during the search may be detained on the premises by the judicial police officer for the time strictly necessary to carry out these operations'*.

The ECJ has clarified that **Directives 2012/13** and **2013/48** apply to searches, as they carry a risk of self-incrimination and therefore require the presence of a lawyer. This interpretation is reinforced by **recital 20** of **Directive 2013/48**, which distinguishes preliminary checks from evidence-gathering measures, placing searches firmly within the latter. The European Economic and Social Committee has similarly endorsed lawyer presence during searches, suggesting practical safeguards such as time limits after notification. Furthermore, the ECtHR has also required lawyer access in administrative searches (customs, tax, competition), a parallel that underscores the need for equivalent safeguards in criminal proceedings, where judicial oversight is not always guaranteed.

Therefore, the CCBE urges that **Directive 2013/48/EU** be amended to explicitly include searches and seizures of premises belonging to, or accessible by, the accused within the scope of **Article 3(3)(c)**. Only such a clarification can guarantee the effective exercise of defence rights and prevent systemic violations of the right to a fair trial.

5. Defence investigations

The CCBE believes that Member States should provide the facility for defensive investigations, i.e. investigations conducted by defence lawyers in criminal proceedings to gather evidence in favour of their clients, as already provided for in a number of Member States.

The CCBE draws attention to the Study on "Criminal procedural laws across the European Union – A comparative analysis of selected main differences and the impact they have over the development of EU legislation", which identifies serious shortcomings in transnational proceedings. The study concludes that the procedural rights directives were not designed to address the specific challenges faced by the defence in cross-border investigations. Despite references to procedural rights in mutual recognition instruments, existing frameworks remain prosecution-driven and operate on a "top-down" model, with requests exchanged between judicial or police authorities. Defence lawyers, by contrast, cannot directly request investigative measures in another Member State, leaving them with limited means to secure evidence abroad. This imbalance undermines equality of arms and highlights the need for a separate EU instrument to guarantee robust procedural safeguards for the defence in transnational investigations.

The CCBE agrees with the above observations and strongly supports the suggestion that "A dedicated procedural framework should be established with regard to transnational investigations. This would further develop and instill legitimacy in the principle of mutual trust. An in-depth reflection should be initiated on defining a set of specific rules applicable to the defence in transnational investigations".

Considerations made by the above-referenced report regarding transnational investigations may be done regarding domestic proceedings also. We are far from a full equality of arms criminal proceedings in the EU context.

In this context, it is essential to emphasise the importance of effective and efficient defence, which is reflected particularly in the fact that the accused has the opportunity to actively contribute to the outcome of the criminal proceedings, especially by searching for and obtaining evidence.

The absence of access to active defence investigation - which can also be formulated as the defence's search for evidence - would require absolute objectivity and complete impartiality from the authorities involved in the criminal process. However, in practice, this represents an entirely unrealistic notion. Moreover, such an approach would not meet the requirements placed on democratic states.

Criminal procedure codes across EU member states instruct the authorities involved in criminal proceedings to establish the factual situation beyond reasonable doubt, with the investigative principle combined with the presumption of innocence assuming that the authorities are to obtain evidence primarily aimed at uncovering the true perpetrator, and therefore they also have the obligation to secure evidence in favour of the accused. However, objectivity and zero mental bias proportionally decrease with each subsequent phase (stage) of the criminal proceedings that culminate in the filing of an indictment. This is understandable because the decision on charges is substantively much narrower than the indictment, which not only concludes the pre-trial proceedings but also transforms the prosecutor - previously the master of the investigation (dominus litis) - into a party in the trial. It is assumed that at such a stage, the prosecutor possesses sufficient evidence incriminating the accused, and therefore this fact can logically lead to a tendency to present evidence primarily unfavourable to the accused.

In practice, the implementation of active defence investigation by the accused or the defence counsel faces a broad range of problematic aspects that significantly reduce its efficiency and effectiveness. The defence does not have the same ability to secure and conduct evidence as the authorities, due to the absence of legal regulation of defence investigations in the EU law and in the most EU members states.

If the defence investigation is carried out by the accused, it may lead the authorities to believe that grounds for "*collusive custody*" exist, particularly concerning attempts to contact potential witnesses. In the case of the defence counsel, the situation is also quite complicated. The defence counsel is obliged to act in the client's interest and therefore cannot secure evidence that would be unfavourable to them. They must thoroughly verify each piece of evidence to avoid securing evidence detrimental to the accused.

The absence of legislative rules and procedural mechanisms for defence investigations can lead to situations where evidence obtained by the defence is assessed as illegal and excluded from the proceedings as inadmissible. This deficit weakens the effectiveness of the defence, disrupts the adversarial nature of the process, and negatively affects the equality of arms in criminal proceedings, which is a key principle of a fair trial. A typical example of the negative consequences of the absence of defence investigation is the case of Vasaráb and Paulus v. Slovakia, in which the European Court of Human Rights (ECtHR) found a violation of **Article 6(1)** and **6(3)(d)** of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") on the grounds that the applicants' guilt was established solely on the basis of evidence presented by the authorities, with no indication that any evidence proposed by the defence was rejected or not examined. In other words, all evidence presented by the prosecution was examined. In contrast, none of the defence's evidence proposals were carried out, despite continuous requests for their examination throughout all phases of the proceedings. The defence proposed nineteen points on which evidence should have been taken.

In this context, it is important to underline that the legal regulation of defence investigation is not unique or limited to the conditions of the USA or the UK but also exists within the continental legal system — for example, in Italy. Legislative rules in the EU regulating defense investigation and the collection of evidence will contribute to the effectiveness of the fair trial and equality of arms in criminal proceedings across EU member states.

An important benefit of defence-led investigations is their potential to reduce the burden on public authorities. By enabling lawyers to conduct investigations, certain inquiries currently carried out by prosecutors or police can be avoided. In some cases, a defence investigation may be sufficient to close a case or may lead the lawyer to advise the client that their position is untenable and encourage an early settlement.
In both cases, the justice system saves significant time and resources while ensuring more efficient proceedings.

6. Freezing assets and confiscation.

The CCBE recommends that the European Commission adopt binding measures at EU level to address shortcomings in the area of frozen assets. Specifically, to the main issue concerns the freezing of assets that are not subsequently confiscated.

According to the **Article 8(5)** of the Directive **2014/42/EU** of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, the conditions or procedural rules under which such property is returned shall be determined by national law (hereinafter referred to as the "Directive"), it applies that "*Frozen property which is not subsequently confiscated shall be returned immediately. The conditions or procedural rules under which such property is returned shall be determined by national law*."

The CCBE'therefore recommends a harmonised legal framework that would enforce:

(a) Maximum time limits for the freezing of property.

The absence of a maximum time limit for the freezing of property under the Directive has led to legal uncertainty and risks disproportionate interference with property rights. In practice, property may remain frozen for extended periods – even in cases where no confiscation ultimately occurs – causing undue hardship to individuals and businesses. Although **Article 8(5)** provides that property not subject to confiscation must be returned immediately, it leaves the conditions and procedures to national law and does not address excessive duration. To strengthen legal certainty, ensure proportionality, and protect fundamental rights, the CCBE considers it necessary to introduce a harmonised requirement that national legislation set a maximum duration for freezing orders. This duration may be differentiated depending on the stage of criminal proceedings and the complexity of the case.

(b) Minimum standards for compensation to owners of frozen property that is not subsequently confiscated

Where frozen property is not subsequently confiscated and is returned, the restriction on its use often causes significant financial harm to the owner. The Directive currently lacks binding rules on compensation in such cases, and the conditions or procedural rules under which compensation may be claimed are determined by national law. This leads to legal fragmentation and diverging standards among Member States.

Delays in international judicial cooperation may cause frozen property to be retained for longer periods also in the case of persons from other Member States, for example where the person affected is residing in one Member State while the criminal proceedings or the assets concerned are located in another. Establishing a minimum level of compensation would reduce inequalities, promote equal treatment across the Union, and safeguard internal market freedoms.

To that end, a flat-rate compensation (x % of the property value per annum) should be provided automatically when frozen property is not subsequently confiscated and is returned. The flat-rate amount should reflect the typical loss of income or economic benefit suffered due to the freezing. Where the owner is able to demonstrate that the damage suffered exceeds the flat-rate amount, the compensation should be adjusted accordingly within the same procedure.

7. Conflicts of jurisdiction.

As the Commission pointed out in its discussion paper regarding *Lisbonization,* the system of *consultations* to determine jurisdiction is problematic. Indeed, the determination of jurisdiction is the starting point for the protection of Human Rights and procedural safeguards, taking into account the different levels of protection that exist across Member States. The system of consultation clearly leads to forum shopping and a lack of legal certainty which may also impact on the right to *ne bis in idem*. Furthermore, this system can lead to inefficiency, which happens when the authorities of the Member States at stake do not want to take the case.

In that sense, it is surprising that a Regulation exists on conflicts of jurisdiction in civil and commercial matters, but not in criminal matters. Regulation 1215/2012 shows how the EU

can distribute jurisdiction among the Member States in a fair manner, avoiding conflicts and problems, and providing legal certainty, which is one of the most important requirements for the rule of law.

The guidance elaborated by EUROJUST is already a significant start. However, it is not binding. It is therefore suggested that, with the addition of a number of amendments and a change to a mandatory nature, this would lead to a judicial decision that is legally based that can be challenged by the victim or the suspect. This measure will contribute to a clearer landscape in the EU Criminal Justice system, avoiding issues of inefficiency, *ne bis in idem*, and fundamental rights.

General Conclusion

The CCBE urges the European Commission to move beyond non-binding recommendations and adopt legislative measures under Article 82 TFEU to establish binding minimum standards, strengthen oversight, and ensure consistent protection of procedural rights across the Union. These reforms are essential to uphold fundamental rights, maintain mutual trust, and secure the legitimacy of EU criminal justice cooperation.

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Section 3. EU Agencies and Bodies

Executive Summary

Eurojust and the European Public Prosecutor's Office (EPPO) play a vital role in combating serious cross-border crime. However, the CCBE remains concerned about persistent opacity in aspects of their procedures, especially where their actions materially affect suspects and defence rights.

Current challenges include limited access to information on interventions and insufficient safeguards around data exchange between agencies and Member States. Without clearer guarantees, defence lawyers cannot effectively challenge procedural irregularities, making the right to defence largely theoretical. The CCBE is not seeking disclosure of sensitive operational data but calls for reasoned, documented interventions subject to enforceable minimum procedural safeguards in line with **Article 47** of the EU Charter.

Introduction

Eurojust and the EPPO are central to EU efforts against cross-border crime. Yet the opacity of their decision-making processes creates tangible obstacles for the defence. In particular:

a) Interventions that significantly affect suspects or defendants are often undocumented or inaccessible, limiting the ability to raise legal challenges.

b) There is a pressing need for greater clarity on how data exchanges between Eurojust, the EPPO, and national authorities are carried out, including in cooperation with Europol, and for assurances that such exchanges are subject to sufficient safeguards to ensure legality, accuracy, and the protection of defence rights.

c) Oversight mechanisms remain fragmented, leaving gaps in accountability and transparency.

The CCBE stresses that expanding the powers of these agencies and bodies must go hand in hand with strengthening procedural safeguards and transparency.

Proposals

The CCBE recommends that any initiative to reinforce the role of Eurojust and the EPPO, must be accompanied by stronger guarantees of defence rights, including:

(a) **Formal recognition of defence rights and equality of arms** in the legal frameworks governing Eurojust and the EPPO.

(b) Procedural records: All interventions materially affecting suspects must be documented, reasoned, and accessible under judicial control.

(c) Access mechanisms: Defence lawyers should be able to request clarifications or contest an agency's role before a competent authority.

It is envisaged that there will be circumstances where the only effective challenge to the conduct of the agency before a supervising judicial body will be where the point of view of the suspected person can be articulated by a lawyer acting on their behalf. That lawyer would need access to the case materials and the records of the conduct of the agency.

It is accepted that there will be cases where those lawyers should be entirely independent and not the lawyer representing the suspect in the main proceedings. This arrangement of having '*special counsel'* appointed by the court and answerable to the process, rather than to the client, can ensure that there is a robust investigation of the conduct of the agency without compromising the sensitive details of the particular operation or indeed of the general procedures of the agency at all.

(d) Data exchange safeguards: Any exchange of data between Eurojust, the EPPO, Europol in its cooperative role, and the competent national authorities must comply with strict rules on legality, proportionality, and defence rights, including mechanisms for defence counsel to verify and, where necessary, challenge the lawfulness of such exchanges.

(e) Stronger oversight: Independent oversight bodies should be empowered to ensure that fundamental rights are not only declared but effectively protected, with particular attention to digital and cross-border data flows.

(f) Defence participation in jurisdiction conflicts: Amend the Council Framework **Decision 2009/948/JHA**, of 30 November 2009 on prevention and settlement of conflicts

of exercise of jurisdiction in criminal proceedings, to allow, where consistent with confidentiality, the defence lawyer to participate in jurisdictional settlement discussions.

(g) Complaints mechanism: Establish a formal right for individuals to lodge complaints against unjustified or disproportionate interventions by Eurojust or the EPPO.

Conclusion

These measures would enhance transparency and accountability, ensuring that the operational effectiveness of Eurojust and the EPPO is followed by robust protection of defence rights.

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Section 4. Digitalisation of Criminal Justice

Executive summary

- **Overview:** The CCBE recognises the potential of digital technologies - such as artificial intelligence (AI) and videoconferencing - to enhance efficiency and cross-border cooperation in criminal justice. However, without robust legal safeguards, these tools risk undermining fundamental rights, equality of arms, and the integrity of judicial proceedings.

- AI in Criminal Proceedings:

    - **Admissibility & Reliability** – Introduce clear rules on AI-generated and digital evidence, ensuring transparency, reliability, and chain-of-custody protection.
    - **Defence Rights** – Guarantee the right to access, review, and challenge AI-derived evidence.
    - **Human Oversight** – Preserve the requirement of a human judge at all stages; judges must retain full decision-making responsibility.
    - **Ethical & Non-Discriminatory Use** – Ensure AI respects privacy, non-discrimination, presumption of innocence, and confidentiality of lawyer–client communications.
    - **Regulatory Framework** – Establish pre-defined, use-case-specific rules grounded in human rights, transparency, accountability, and the rule of law.
    - **Prohibited Uses** – Ban high-risk technologies such as predictive and profiling AI tools in criminal justice.

- Videoconferencing in Cross-Border Criminal Proceedings

    - **Fair Trial Safeguards** – Videoconferencing must remain the exception for hearings on the merits and should not be adopted solely for cost savings.
    - **Consent & Legal Advice** – Use requires informed consent from the accused, with the right to legal consultation and remedies to challenge its use.

- **Confidentiality** – Implement harmonised safeguards against interception; breaches must be criminal offences.
- **In-Person Protections** – Ensure presence of defence counsel in prisons to prevent intimidation; allow face-to-face witness examinations where required.
- **Technical Standards** – Develop EU-wide minimum standards to ensure realistic interaction, visibility of nuances, and secure document handling.
- **Training** – Provide training for authorities and practitioners to ensure competent and rights-compliant use.

- **CCBE's Position**: Technological innovation must serve justice, not compromise it. Any digital tool in criminal justice must be adapted to the specific legal environment, operate under effective human oversight, and be governed by clear, enforceable rules that uphold the right to a fair trial and public trust in the judicial process.

Introduction

The rapid integration of technology into criminal justice - whether through the deployment of artificial intelligence (AI) tools or the increasing use of videoconferencing in cross-border proceedings - offers new opportunities for efficiency and cooperation. However, these developments also pose significant risks to fundamental rights, procedural fairness, and the integrity of the justice system.

The CCBE recognises the potential benefits of these technologies, but stresses that their use must be subject to clear legal frameworks, strict safeguards, and effective oversight, as well as accompanied by appropriate guidance and training to reflect the specificities of each technology used and the circumstances of such use. Without these protections, technological innovations could erode rather than strengthen the right to a fair trial, equality of arms, and public trust in judicial outcomes.

This paper addresses two areas of concern:

- The use of AI tools in criminal investigations and proceedings.
- The use of videoconferencing in cross-border criminal proceedings.

In both areas, the CCBE advocates a balanced approach that leverages the benefits of technology while ensuring that fundamental rights and procedural guarantees remain at the core of EU criminal justice.

1. The use of AI in criminal proceedings

With the increasing use of AI tools in criminal investigations, the CCBE supports the introduction of specific admissibility rules for AI-generated and digital evidence.
Such rules should address:

(a) Ensuring reliability and transparency of AI-driven forensic tools.

(b) Maintaining integrity of digital evidence, ensuring chain-of-custody requirements are met.

(c) Guaranteeing defence rights to fully access, review, and challenge AI-generated evidence.

Without clear rules, there is a risk that courts will rely on AI-generated evidence without sufficient scrutiny, potentially violating the principle of equality of arms. We also need to recognise that courts may be insufficiently equipped to analyse AI generated evidence. To ensure that meaningful scrutiny is possible, there must be a verifiable audit trail of the precise use to which artificial intelligence has been deployed at every step in the proceedings.

Application of AI tools for law enforcement purposes

While the CCBE recognises possible efficiency gains, it stresses that AI tools for law enforcement carry serious risks for human rights and the rule of law.

AI tools used in the justice system and law enforcement must be adapted to these specific environments. In this regard, it is crucial that the use of AI fully respects fundamental rights, and in particular the right to privacy and family life, the right to freedom of expression, the right to non-discrimination and the right to a fair trial.

Effective human oversight of the use of AI tools in the field of justice

From the point of view of the legal profession, the use of these systems should not undermine the ethical standards to which the profession is bound, in particular the confidentiality of communications between lawyers and clients which is essential to uphold the rule of law. The CCBE is convinced that effective human oversight is a non-negotiable safeguard. In particular, human judges must be required to take full responsibility for all decisions and a right to a human judge should be guaranteed at all stages of the proceedings. Moreover, it should also be stressed that AI systems must be developed with full respect for the diversity of linguistic contexts and legal traditions in which they are to be used. This implies ensuring that the data in which AI tools are trained and used respects the principle of non-discrimination and the principle of presumption of innocence.

The CCBE believes that any actual or potential risk to the proper and fair functioning of the justice system is a threat to justice itself. The CCBE also considers that the use of some technologies, such as predictive and profiling AI tools in law enforcement and criminal justice, may pose unacceptable risks in a democratic society. Therefore, together with other stakeholders, the CCBE has called for their ban, and we note the prohibitions under the current AI Act and would call for the careful examination of the exceptions.

The need for a set of defined rules and principles governing the use of AI tools

Before any AI tools are used in the justice system and law enforcement, the CCBE calls for a set of defined rules and principles governing their use. To this end, the CCBE firmly believes in the importance of the work carried out by national, European and international organisations and regulators aiming at defining the required level of transparency and the parameters for the development, deployment and use of AI in the justice system and law enforcement.

Therefore, the CCBE highlights the need to ensure that:

- the use of AI tools in the justice system and law enforcement is appropriately controlled and regulated and that the regulation reflects the specificities of these systems. In particular, these regulations must respect the right to a fair trial and the right to a human judge.
- the rules governing the use of AI tools are grounded in a clear set of ethical principles, such as the respect for human rights, transparency, accountability and upholding the rule of law, and which are set beforehand.
- these principles are turned into use-case specific operational rules and guidelines that must be followed when introducing AI tools into the justice system or law enforcement to make sure that they do not jeopardise the right to a fair trial. This requires careful consideration and knowledge of the potential risks and benefits of different AI tools, as well as a deep understanding of the ethical principles that underpin the justice system. The risk factors to be considered are complex and depend on specific use cases, as outlined above, including reliability of the AI tool and the tasks involved.

2. The use of video-conferencing in cross-border criminal proceedings

Introduction

The CCBE developed a position many years ago on the use of videoconferencing in cross-border criminal proceedings. The CCBE understands that videoconferencing offers efficiency but carries major risks to defence rights. In particular, its use should not undermine fundamental principles of a fair trial especially with respect to defence rights.

We set out below our concerns in relation to possible shortcomings with videoconferencing in cross-border criminal proceedings. However, it is also established that in cases where the parties consent videoconferencing can play an important role in, for instance, securing

evidence of expert witnesses from other jurisdictions or for facilitating the attendance of non-controversial, albeit essential witnesses who are unable to travel.

Main concerns

The CCBE's main concerns are as follows:

(a) If there is a trend towards using videoconferencing for cost reasons, this could eventually result in it being the main or only form of access to a suspect held in custody in cross-border cases.

The CCBE does not consider this acceptable and stresses that cost savings should never be at the expense of defence rights which in most cases can be better guaranteed in physical hearings. Therefore, the use of videoconferencing should remain the exception to the main hearing of the case on its merits.

(b) The CCBE considers that the use of videoconferencing must always be subject to the suspected or accused person´s consent. Care must be taken that the suspect or accused person is able to seek legal advice prior to consenting to the use of videoconferencing. Also, legal remedies should be readily available to challenge a decision on using videoconferencing.

(c) Experience shows that in case videoconferencing is used in prison, the suspected or accused person must be assisted -in presence- by a lawyer in order to ensure that no intimidation takes place off screen.

(d) Some practitioners may be reluctant to rely on the confidentiality of communication with clients through videoconferencing because of interception or surveillance risks. It is very important that, if there is videoconferencing, the necessary safeguards to protect confidentiality can be assured. Any breach of confidentiality, be it by a third party or agency, should be a criminal offence, and such information should not be able to be relied upon in the proceedings. The necessary safeguards across all the Member States which use videoconferencing should therefore be harmonised.

(e) The accused or suspected person has a right to ask for the personal appearance of a material witness in order to exercise his right under **Article 6(3) (d) ECHR**. Alternatively, the examination of the witness by the accused person and his/her counsel shall take place face to face in his/her (the witness') residence where the witness is prevented from appearing in person before the court.

(f) In cross-border criminal cases, particularly where the defendant might not be a native speaker and will be subject to different cultural influences, the judge might not be able to examine so easily the nuances of the defendant's appearance and responses through a video-link. Therefore, it is important that the EU develops mandatory minimum standards as to the technical arrangements that should be in place for the use of videoconferencing. Such technical arrangements should ensure as much as possible a true-to-life hearing experience including full communication/interaction of all the parties to the procedure with the examined person.

(g) The videoconferencing system must allow the possibility to exhibit documents to the one who is providing the statement.

In those cases, the exhibition should be done via an independent person present with them (court clerk or similar) who can ensure (e.g. from the point of view of the prosecution) that they are looking at the right page and (from the defence point of view) also ensure they are not looking at other documents, especially not at documents that have not been disclosed to the defence.

(h) The CCBE also encourages the EU to provide for sufficient training opportunities for both competent government authorities as well as legal practitioners in order to become acquainted with the use of videoconferencing technologies for cross-border criminal cases.

Conclusion

Technological innovation must serve justice, not compromise it. Any digital tool in criminal justice must be adapted to the specific legal environment, operate under effective human oversight, and be governed by clear, enforceable rules that uphold the right to a fair trial, public trust in the judicial process and the indispensable role of defence lawyers.

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Conclusion

The High-Level Forum on the Future of EU Criminal Justice has highlighted the pressing need to renew commitment to procedural safeguards and mutual trust among Member States. For the CCBE, strengthening defence rights is not just a legal obligation but the foundation of a fair and effective criminal justice system. A new EU Roadmap on procedural safeguards would close current gaps and ensure that emerging challenges, particularly in digitalisation and judicial cooperation, are met with adequate protections. Without this commitment, the legitimacy of the EU criminal justice system and the trust required for cross-border cooperation are at risk.

Looking ahead, the CCBE remains committed to actively contributing to the High-Level Forum and to the development of EU criminal justice policy. The meetings throughout 2025 provide a vital platform for reform. By prioritising procedural safeguards, the EU can build a system that inspires confidence among legal professionals and the public alike. The CCBE calls on all stakeholders to seize this opportunity to ensure that the future of EU criminal justice remains firmly anchored in the Rule of Law and the protection of fundamental rights.

We are happy to explain or elaborate on any aspect of this paper.

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