EU Procedural Rights Directives and their CJEU Evolution

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Article

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ABSTRACT

The procedural rights of defendants in the EU have evolved through a combination of legislative harmonisation and judicial interpretation by the Court of Justice of the European Union (CJEU). Following the 2009 Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, key directives on the right to information, access to a lawyer, and the presumption of innocence established minimum standards to support the mutual recognition of judicial decisions in criminal matters. This article analyses how the CJEU has interpreted these instruments teleologically, thereby expanding, inter alia, their scope and the understanding of effective remedies while limiting derogations and preserving national procedural autonomy. Throughout this process, the CJEU has avoided EU rules on admissibility of evidence. The author argues that this development amounts to a "case law constitution" of EU criminal procedure, albeit one characterised by ongoing tensions. These notably concern the absence of common exclusionary rules of evidence and unresolved structural issues within the EU criminal justice system.

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I. Introduction: Law as a Living Organism

As articulated by two great jurists in the past, law is in perpetual motion. *Oliver Wendell Holmes* observed that "[t]he life of the law has not been logic: it has been experience."[1] He went on to say that law is a product of history, moral and political theories, and the prejudices of judges and their era as "the rule adapts itself to the new reasons which have been found for it, and enters on a new career."[2] *Benjamin N. Cardozo* identified logic, history, custom, and morals as forces to which judges adhere.[3] He explained that the judge's role is not mechanical application but creative work.[4] Both jurists recognised that legal texts often contain gaps or ambiguities that require ongoing interpretation and adaptation to new developments. In Europe, this is reflected in the European Convention on Human Rights (ECHR) being considered a "living instrument," which means that the Convention must be interpreted in light of present-day conditions.[5] Such interpretation has enabled the European Court of Human Rights (ECtHR) to expand the scope of Convention rights beyond their original meaning. For example, Art. 6 ECHR has evolved to encompass the right to remain silent.[6] Art. 8 ECHR includes the protection of digital communications,[7] environmental quality,[8] and personal identity.[9]

The Court of Justice of the European Union (CJEU) operates under a similar philosophy, namely teleological interpretation.[10] Unlike strict textualism, the CJEU asks what objective a provision serves. Based on such logic, in the founding judgments *Van Gend en Loos* (1963)[11] and *Costa v. ENEL* (1964)[12], the Court transformed the Treaty of Rome from an international public law instrument into the constitutional foundation of a new legal order. In EU criminal law, this approach became evident in the Court's assessment of mutual trust as a basic principle of EU law,[13] and its assertion that EU law must be effective. In *Maria Pupino* (C-105/03),[14] the Court held that national courts must, as far as possible, interpret procedural law in conformity with framework decisions, even prior to the inclusion of the third pillar into the general EU legal order by the 2009 Lisbon Treaty. In *Melloni* (C-399/11),[15] it affirmed the primacy of EU law over national constitutional standards (e.g., judgments *in absentia*). And, more recently, in *G.K. and Others* (C-281/22),[16] the Court in Luxembourg resolved an ambiguity in the EPPO Regulation[17] regarding cross-border investigative measures. This teleological approach causes certain tensions in criminal law, however, given that criminal procedure is closely linked to national constitutional traditions, the organisation of the judiciary, and conceptions of justice.[18]

Before the Lisbon Treaty, an attempt to comprehensively harmonise defence rights at the EU level failed.[19] In its 2009 Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, the Council opted for a measure-by-measure approach under Art. 82(2) TFEU.[20] Six directives have been adopted so far (in chronological order): (1) on the rights on interpretation and translation;[21] (2) on information; (3) on access to a lawyer; (4) on the presumption of innocence; (5) on legal aid;[22] and (6) on procedural safeguards for children.[23] Together they constitute a system of rights that must be read alongside the minimum standard of the ECHR and the EU Charter of Fundamental Rights (in the following: the Charter), leaving significant interpretative space for the CJEU. It should also be borne in mind that these directives are the product of complex compromises. Hence, their text does not reflect the optimal legal solution, but rather what twenty-seven different political and legal traditions, along with the European Parliament, could agree upon. Against this background, this article examines three of the six harmonising directives on defendants' rights ((2)-(4)), which have spawned extensive CJEU case law and interesting judicial interpretations.

II. Directive 2012/13/EU – The Right to Information

Directive 2012/13/EU[24] on the right to information in criminal proceedings is the EU's response to the US Miranda warnings, albeit broader in scope. It applies to all suspects, not just those in custody,[25] and covers warnings about the right to access a lawyer, free legal advice, the right to be informed of charges, the right to interpretation and translation, and the right to remain silent. For suspects not deprived of liberty, prompt oral or written notification is necessary. For arrested or detained persons, the Directive prescribes a written letter of rights, which must be accompanied by information on the maximum period before appearing before a judicial authority and the right to consular assistance. It also addresses the right to information about charges adapted to the different procedural stages. Furthermore, it establishes the right to access case materials, distinguishing between those essential for challenging detention (immediate access) and general evidentiary materials (access before trial). The Directive must be considered a *lex imperfecta,* however, as it does not regulate the admissibility or exclusion of evidence as a remedy in case of a violation of the right to information.[26] As will be shown in the following subsections, the CJEU provided several clarifications and added additional layers to the Directive regarding its scope, the modalities of the information provided, the nature of information to be provided, and the effective remedies.

1. Scope

The CJEU has interpreted the Directive broadly. In *Rayonna prokuratura Lom* (C-467/18), it extended the scope of the Directive (including that of Directive 2013/48) to judicial proceedings for the compulsory admission to a psychiatric institution for acts representing a danger. Such proceedings are closely linked to criminal accusations and may lead to deprivation of liberty.[27] The CJEU also clarified that national law cannot deny a national court the authority to verify respect for procedural rights during the earlier stages of pre-trial proceedings.[28] This is an important expansion of effective remedies and judicial control. Conversely, in *AB and Others* (C-203/20),[29] the Court held that the Directive does not apply to legislative procedures for revoking amnesties or constitutional reviews of them. This is an important reminder that, despite the CJEU's approach to read the scope of the Directive broadly, Directive 2012/13 is still tied to criminal proceedings.

In *Spetsializirana prokuratura* (C-649/19),[30] the Court distinguished between ordinary criminal proceedings and the execution of a European Arrest Warrant (EAW). It noted that Arts. 4, 6(2), and 7(1) of the Directive do not apply to EAW proceedings. This approach was reaffirmed in *IR*,[31] where the Court held that Arts. 6 and 47 of the Charter, the right to freedom of movement and residence, and the principles of equality and mutual trust do not oblige the judicial authority issuing an EAW to forward to the person sought the national arrest decision underlying the EAW or information on available legal remedies. These two judgments demonstrate that the Court has declined to extend the full scope of the Directive to the pre-surrender stage of the EAW system.

2. Information and service modalities

The first case requiring an interpretation of Directive 2012/13 by the CJEU was launched in 2014. A series of judgments in this context concerned the basic structure of the right to be informed, as well as the modalities of service of the information. In *Covaci* (C-216/14),[32] the CJEU ruled that non-resident accused persons must appoint an agent to accept service of a penalty order (*Strafbefehl*), provided that the accused enjoys the full period for lodging an objection (*Einspruch*). Thus, the Court tolerates procedural simplification, but only if it does not deprive the accused of the real opportunity to defence. In *Tranca and Others* (C-124/16, C-188/16 and C-213/16),[33] the Court confirmed that service on an authorised person is permissible provided that once the accused has actual knowledge of the penalty order, he or she is placed in the same position as if the order had been served personally, including through possible restoration to the *status quo ante*. This logic was reinforced in *Staatsanwaltschaft Offenburg* (C-615/18),[34] whereby Art. 6 of Directive 2012/13 precludes a subsequent criminal conviction based on non-compliance if the person concerned was unaware of the order (here: driving ban).

3. Accusation information and access to the file

Another group of cases concerned the timing and completeness of accusation information and access to the file. Regarding the linguistic dimension of the right to information, the CJEU reiterated in *IS* (C-564/19), [35]that Member States must take concrete measures to ensure the quality of interpretation and translation. This means that a person cannot be tried *in absentia* if he/she was not informed, in a language he/she understands, of the accusation due to inadequate interpretation. The same holds true if it is impossible to verify whether that information was effectively conveyed. In *Kolev and Others* (C-612/15),[36] the Court ruled that Art. 6(3) of Directive 2012/13 does not require to provide detailed information on the accusation before the case reaches the trial stage. This information can be provided after the indictment and even after the start of the hearing, provided that the rights of the defence and fairness of the proceedings are safeguarded. According to the Court, the same applies to Art. 7(3) of the Directive regarding access to the file. In this regard, a functional reading is preferred, which focuses on sufficient time and opportunity for defence. This issue arose again in *Kolev II* (C-704/18),[37] where the Court upheld national procedural autonomy and clarified that EU law does not oblige the trial court to remedy procedural defects, provided that the rights guaranteed by Arts. 6(3) and 7(3) of Directive 2012/13 were effectively protected. In *DS and KW [Stogenchev]* (C-342/25),[38] it also clarified that Art. 7(2) and (3) on access to case materials does not address admissibility of evidence or information in that regard.

Conversely, the CJEU held in *ZX* (C-282/20), that Art. 6(3), read together with Art. 47 of the Charter, applies throughout the criminal proceedings and precludes national legislation that does not provide for any procedural mechanism for remedying errors/omissions in an indictment that prejudice the accused's right to information about the charges after the pre-trial hearing.[39] It was also clarified that national courts must interpret national rules on amending charges in conformity with EU law as far as possible, in order to allow the prosecutor to remedy such defects while safeguarding defence rights actively and genuinely. This judgment is particularly important because it transforms the right to information into a procedural guarantee.[40] Another relevant issue is the distinction between factual changes and changes in legal classification. In *Moro* (C-646/17),[41] the Court held that Art. 6(4) of the Directive and Art. 48 of the Charter do not preclude national legislation under which an accused person may request a negotiated penalty during trial if the factual basis of the accusation changes. However, this is not permitted if only the legal classification changes. The decisive point was that the accused must be promptly informed of any such change to safeguard fairness and he/she must have an effective defence opportunity.

4. Effective remedy and the Charter

Ultimately, the CJEU dealt with issues involving the right to challenge failures to provide information. In *Politseyski organ pri 02 RU SDVR* (C-608/21),[42] it clarified that Art. 6(2) of the Directive does not require that all reasons for detention appear in the detention order, provided that the information supplied effectively enables the defence and is not provided only in the event that the legality of the detention is challenged. In *K.B. and F.S.* (C-660/21),[43] a structural gap in the Directive was addressed, as Art. 8 of Directive 2012/13 contains no express remedy for failures or refusals of the competent authorities to provide information in accordance with this Directive. This gap was filled by Arts. 47 and 48(2) of the Charter, as interpreted in the light of Arts. 6 and 13 ECHR. Hence, suspects must have a practical and effective opportunity to raise such a breach, including access to the file and a reasonable time to do so. This does not, however, automatically preclude national rules that prohibit courts from raising the issue on their own motion.

5. Interim conclusion

Overall, these judgments interpreting Directive 2012/13 show that the CJEU has transformed Directive 2012/13 into a comprehensive instrument for ensuring fairness in criminal proceedings. They feature the following crucial issues:

- Extending the scope of the Directive to areas that are not obviously covered, such as psychiatric committal proceedings;
- Insisting on practical and effective information, rather than formal notice;
- Tying information rights closely to access to the file, effective remedies, interpretation quality, and judicial review;
- Drawing limits in the specific context of the EAW and non-criminal procedures;
- Interpreting the Directive in dialogue with the Charter and ECtHR case law.

The result is a body of case law that is pragmatic in its refusal to impose automatic consequences, favouring contextual fairness instead.

III. Directive 2013/48/EU - The Right of Access to a Lawyer

Directive 2013/48/EU[44] is the most significant of the instruments envisaged in the 2009 Roadmap in terms of fair trial rights. It is also the most controversial piece, however, as it may have contributed to a lowering of ECtHR standards, whereby the ECtHR specifically referred to exceptions in its *Ibrahim and Others* judgment – foreseen in the Directive.[45] In this respect, ECtHR case law evolved from a clear affirmation of the right to a lawyer in pre-trial/police proceedings in the *Salduz* case,[46] to a right to a chosen lawyer in the *Dvorski* case,[47] and then back to a relativisation of the right to a lawyer in the aforementioned *Ibrahim case.* The Directive requires legal assistance in the following situations:

- Before questioning of suspects or accused persons by law enforcement authorities;
- Before investigative acts (e.g., identity parades, confrontations, and reconstructions);
- Without undue delay after deprivation of liberty; and
- Before the appearance of suspects/accused persons at a court with jurisdiction over criminal matters.

In terms of its substantial content, the Directive includes the following rights:

- The right to communicate confidentially with a lawyer before and during questioning;
- The right to communicate with third parties and consular authorities if a person is deprived of their liberty;
- The right to a lawyer in European Arrest Warrant proceedings, in both the executing and the issuing states.

Any waiver of the right must be voluntary and unequivocal, and it must be preceded by sufficient information. The Directive permits derogations in the pre-trial phase in exceptional circumstances, i.e., in cases of geographical remoteness and urgent necessity in order to avert serious adverse consequences for the person or the proceedings. However, attempts to introduce a more explicit EU admissibility/exclusionary rule in the event of a breach of the Directive's rights remained unsuccessful. Furthermore the Directive remains vague with regard to remedies as, for instance, it only refers to the need for having "effective remedies" in place and that, in the event of assessing statements from suspects/accused persons or of evidence obtained in breach of the rights, the national courts must merely take into account "respect of the rights of the defence and fairness of the proceedings."[48] As will be illustrated in the following subsections, the CJEU case law on Directive 2013/48 focused on the scope of the Directive underlining a broad understanding of proceedings covered, the waiver of such a right, possible derogations, the question of effective remedies, and applicability to vulnerable persons.

1. Scope

Similar to its case law on the Directive on information, the CJEU interpreted the scope of the Directive on the right to access a lawyer in broad terms. In *Rayonna prokuratura Lom*, the Court ruled that proceedings for compulsory psychiatric hospitalisation fell within the scope of the Directive, thus reinforcing the autonomous interpretation of the notion "criminal proceedings" (see also Section II.1 above).[49]

In *Rayonna prokuratura Lovech* (C-209/22), the CJEU clarified that Directives 2012/13 and 2013/48 apply from the moment a person is effectively treated as a suspect, even if national law does not recognise the concept of "suspect". Accordingly, for suspect status, two conditions must be fulfilled: (1) the existence of suspicion, and (2) information by official notification or otherwise.[50]

The Court ruled, however, that Member States are not required to introduce new remedies, and that limitations to judicial decision-making at the preliminary stage of criminal proceedings are acceptable, provided that, first, suspects can subsequently raise the issue before a court deciding on the substance of the case, and, secondly, that court can draw conclusions from an infringement, in particular as regards the inadmissibility or the probative value of the evidence.[51]

Ultimately, the CJEU clarified that the meaning of access to a lawyer "without undue delay" after deprivation of liberty (Art. 3(2)(c) of Directive 2013/48) does not necessarily mean "immediate" access, i.e. at the very moment of the deprivation of liberty. In the specific case of *Rayonna prokuratura Lovech,* this meant that a personal search and seizure at the preliminary stage of criminal proceedings did not automatically require access to a lawyer, provided that it was not necessary for the person to exercise defence practically and effectively.[52]

2. Validity of waiver

The CJEU has followed a strict approach as regards the conditions for a waiver of the right of access to a lawyer. In *Stachev* (C-15/24 PPU),[53] the Court ruled that a written waiver by an illiterate suspect is invalid if the consequences of waiving the right to a lawyer were not explained in a manner adapted to the suspect's vulnerability and the waiver was not recorded. This places positive obligations on law enforcement authorities. Furthermore, the Court clarified that the person concerned must be informed about the possibility to revoke the waiver before subsequent investigative acts take place.[54]

3. Derogations

Several CJEU judgments have addressed the possibility to derogate from the rights enshrined in the Directive. In *VW* (C-659/18), the Court ruled that the grounds for temporarily derogating from the right of access to a lawyer are listed exhaustively and must be interpreted narrowly. As a result, the failure of a suspect to appear following summons to appear before the investigative judge is not a ground for delaying access to a lawyer until the national arrest warrant issued against him/her has been executed. The CJEU made clear here that derogations cannot be extended by analogy or by reference to procedural convenience.[55] This approach confirms the Union legislators' intent to avoid scope creep regarding derogations, as indicated in the Commission's implementation report.[56]

In its case law on the right to choose one's own lawyer, the CJEU aligns with the ECtHR decision in *Dvorski*.[57] However, it reaffirmed that this right is not absolute. In *Kolev and Others* (C-612/15),[58] the CJEU held that Art. 3(1) of Directive 2013/48 does not preclude national legislation allowing dismissal of the same lawyer acting for two accused persons if there is a conflict of interest. In *Stachev*, the Court followed up on its strict stance on derogations, stating that national police authorities cannot rely on Art. 3(6)(b), allowing temporary derogation where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings, if this provision has not been transposed into the national legal order.[59]

4. Remedial dimension and judicial review

As with other Roadmap directives, one of the main unresolved issues in Directive 2013/48 relates to remedies in the event of a violation. In the aforementioned case of *K.B. and F.S.* (see II.4. above),[60] the Court established the interconnection between a late notification of the right to remain silent and the access to a lawyer, if necessary having obtained legal aid. Further, examining the CJEU's case law on remedies for breaches of the rights to access a lawyer, the Court first applied a logic similar to that applied in its case law on the Directive on information: to preserve national procedural autonomy, but only on the condition that defence rights can be exercised effectively. This approach was evident, for example, in *DD* (C-347/21),[61] where an incriminating witness was examined in the absence of the accused and his/her lawyer for reasons beyond their control. According to the CJEU, the resulting breach may be remedied by an additional examination of this witness, provided that the accused and his/her lawyer receive the minutes of the questioning and are able to question the witness freely.

Similarly, in *Stachev*,[62] the Court held that Art. 12(2) of Directive 2013/48, read together with Art. 47 of the Charter, requires the court deciding on detention to be able to assess whether evidence was obtained in breach of access to a lawyer and, where appropriate, to disregard such evidence.

5. Vulnerable persons

Another crucial aspect of the Directive is ensuring access to a lawyer by vulnerable persons. The CJEU imposed positive duties on the authorities in this regard. In *Barało* (C-530/23),[63] it held that Member States are under an obligation to ensure that the vulnerability of a suspect is ascertained and acknowledged before they are questioned or investigative measures or measures of evidence gathering are carried out. The authorities must also ensure that such persons have access to a lawyer with the benefit of legal aid without undue delay and, at the latest, before questioning or before the relevant act is conducted. While the Court did not derive a formal presumption of vulnerability from EU law, it made clear that the authorities themselves must identify and address vulnerability in practice and that access to legal aid for vulnerable persons cannot depend on prior requests. In that regard, it was confirmed that Art. 12 of Directive 2013/48 (and Art. 8 of

Directive 2016/1919) require for vulnerable persons reasoned decisions on their vulnerability, on refusal of legal aid, and on questioning without a lawyer, which must be open to challenge.[64]

6. Interim conclusion

The CJEU's case law on Directive 2013/48 has shown that the Court in Luxembourg has not simply replicated the Strasbourg Court's (ECtHR's) case law. Judgments such as *K.B. and F.S.*, *DD*, and *Kolev* demonstrate a willingness to tolerate certain procedural defects, delayed disclosure or delayed access, if these can be effectively raised or remedied at a later stage of the criminal proceedings and if the fairness of the proceedings as a whole is not compromised. Conversely, the judgments taken in *Stachev*, *Rayonna prokuratura Lom*, *VW*, *CH*, and *Barało,* for instance, demonstrate a potentially stricter approach than that taken by the ECtHR, particularly with regard to vulnerable persons and the availability of judicial review. Thus, we can conclude that the CJEU has not simply copied ECtHR case law, but rather follows a structured approach in which derogations must remain exceptional, vulnerability heightens the intensity of the need for protection on the part of the authorities, and effective remedies must exist in the national legal order. Procedural autonomy is only accepted insofar as it does not undermine the effectiveness of the rights guaranteed.

IV. Directive (EU) 2016/343 – The Presumption of Innocence

Directive (EU) 2016/343[65] addresses several aspects of the presumption of innocence, including:

- The prohibition on public portrayal of suspects as guilty;
- The prohibition on degrading presentations in court;
- The burden of proof; and
- The right to remain silent and the privilege against self-incrimination.

The Commission's original proposal would have permitted a reversed burden of proof in certain circumstances, and the Council wanted silence to be a relative right capable of negative consequences, in line with the ECtHR's ruling in *John Murray v. United Kingdom*.[66] However, the European Parliament successfully campaigned for the right to remain silent to be enshrined as an absolute right. As a compromise, the question of the legal remedy and exclusionary rules of evidence is left to the "effective remedy" formula that runs throughout all the Roadmap directives. Looking at Directive 2016/343 at a glance, it can be noted that it sets high standards regarding the presumption of innocence, but only mediocre standards regarding the right to be present at trial and its derogations establishing no obligatory retrial.[67] In the latter regard, the Directive largely follows the provisions of Framework Decision 2009/299/JHA.[68] Regarding Directive 2016/343, the CJEU has focused primarily on its scope, public references to guilt, the right to be present at trials, and judicial independence – the case law of which is outlined in the following subsections.

1. Scope

As with the Directives on information and access to a lawyer, the CJEU had to clarify the scope of Directive 2016/343. In *Emil Milev* (C-310/18 PPU),[69] the Court interpreted Arts. 3 and 4(1), ruling that preliminary procedural decisions, including pre-trial detention, can be based on suspicion/incriminating evidence, provided that the decision does not characterise the person as guilty. This approach was reinforced in *DK* (C-653/19 PPU),[70] where the Court held that Art. 6 of the Directive on the burden of proof does not apply to national rules making release from pre-trial detention conditional upon the accused demonstrating changed circumstances. As mentioned above, the CJEU extended the reach of the Directive beyond ordinary criminal trials in *Rayonna prokuratura Lom,* such that the Directive also covers compulsory psychiatric committal.[71]

2. Public references to guilt

Art. 4 of the Directive, which regulates the presumption of innocence in the context of public references to guilt, was in the spotlight in case *AH and Others* (C-377/18).[72] Here, the CJEU ruled that a plea agreement procedure, in which only one of the co-accused pleaded guilty while mentioning others, is compatible with Art. 4(1). However, this is only permitted if such a reference is necessary for the characterisation of the legal liability of the person who entered into the agreement and if the agreement makes it clear that the guilt of the other co-accused has not yet been legally established.

Further, in case *AC [Kotaňák]* (C-748/24),[73] it ruled that regarding Arts. 3, 4(1) and 6(1) of Directive 2016/343, an appellate court may examine the evidence in detail and assess whether the legal elements of the alleged offence are met when reviewing a decision to close criminal proceedings because no offence was committed. This is permitted even if national law does not require such an assessment and even if the court relies solely on evidence collected during the investigation, without the accused having had a chance to comment on that evidence. However, the presumption of innocence prohibits the court from adopting reasoning that expresses or implies a view that the accused is guilty of the criminal offence in question. Whether this threshold has been crossed depends on the wording of the decision, read in its full particular context and in light of the nature and stage of the proceedings.

3. Presence at trial

A significant amount of case law refers to the right to be present at trial, which forms part of the major dimensions of Directive 2016/343; it is regulated in Arts. 8 and 9. In *TX and UW* (C-688/18),[74] the CJEU held that Art. 8(1) and (2) is not infringed if an accused person, who has been duly informed and represented by a lawyer, decides unequivocally not to attend one of the hearings. The same applies if the person was absent for reasons beyond his or her control, provided that, once informed, he or she either waives his/her right to object or is given the possibility of having the steps taken in his absence repeated effectively. The Court underlines here that Art. 8 protects effective participation, not mere physical presence. This concept was further refined in *DD*,[75] where the Court held that, if a witness had been examined in the absence of the accused or his/her defence lawyer for reasons beyond their control, the violation of the right to be present can be remedied by an additional examination at which the accused and lawyer can question the witness. Full repetition of the earlier examination is not required.

In *HYA and Others* (C-348/21),[76] the Court moved beyond the two aforementioned rulings holding that a conviction cannot be based on witness testimony taken before a judge at the pre-trial stage, without the participation of the accused or his/her lawyer, unless there was a good reason for the witness's absence at trial, the testimony was not the sole or decisive basis for the conviction, and sufficient counterbalancing safeguards existed. This judgment marks a shift from a restrained approach, as Art. 8 was interpreted in close conjunction with the broader fair-trial guarantees of the Charter and ECtHR case law.
In *HN* (C-420/20),[77] the CJEU held that Art. 8(1) does not preclude national legislation that makes the presence of the accused at trial mandatory. However, Art. 8(2) prevents a Member State from holding a trial *in absentia* if the accused is outside the country and cannot lawfully re-enter because of an entry ban imposed by that same State. Hence, the person must have a genuine opportunity to attend, or voluntarily and unequivocally waive that option.[78]

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4. *In absentia* trials

The other side of the coin of the right to be present at trial is the question of whether Member States can hold trials in the absence of the defendant. The first major judgment to interpret Arts. 8 and 9 of Directive 2016/343 concerning absconded defendants tried *in absentia* was *IR* (C-569/20).[79] The CJEU ruled that a new trial or an equivalent remedy can only be denied if precise and objective indicia show that the person had sufficient information to know that a trial would take place and deliberately avoided the official notice with the intention of evading justice.

That same line of argumentation was applied in *TR* (C-416/20 PPU),[80] this time in the context of the EAW. According to the CJEU, the executing authority may not refuse surrender merely because it lacks assurance that the convicted person will enjoy the right to a new trial after surrender. The ruling confirms that Directive 2016/343 does not add refusal grounds to Framework Decision 2002/584/JHA on the EAW, even though the issuing State is still required to comply with the Directive.

A refined approach was taken in *Stangalov* (C-644/23),[81] where the CJEU denied a new trial to a person who absconded after receiving a preliminary indictment during the pre-trial stage if, in the light of all the circumstances, the person may be regarded as having been informed of the trial and was either represented by a mandated lawyer or, in the absence of such representation, had been informed in due time of the consequences of absconding. Thus, absconding alone does not extinguish the right to a new trial.
In *Kachev* (C-135/25 PPU),[82] the CJEU clarified in view of Art. 8(2)(a) and (b) of the Directive that authorities must have made reasonable efforts to locate the person in question and have actually delivered the trial details to the address provided, after the person received a corresponding preliminary indictment; they must also have ensured genuine legal representation (e.g., court-appointed counsel during the pre-trial stage is not sufficient).

The CJEU also clarified the remedial approach in *VB* (C-430/22 and C-468/22),[83] holding that Art. 8(4) does not require the national trial court to indicate the right to a new trial in the *in absentia* judgment; the Directive only requires that the person be informed of that right when he/she is informed of the decision rendered *in absentia*. In *VB II* (C-400/23),[84] however, the Court stated that requests for a new trial must be examined promptly, and that upon notification of the decision, the defendant must receive a full copy of the decision rendered *in absentia* together with clear and understandable information on the available remedies and procedure. It was also confirmed that the existence of the right to a new trial depends exclusively on whether the conditions of Art. 8(2) of Directive 2016/343 are met, leaving no room for discretion in this regard.[85]

In recent decisions, the CJEU has had to deal with modern forms of participation. In *FP and Others* (C-760/22),[86] it held that Art. 8(1) does not prevent an accused person from participating in hearings via videoconference at his/her express request, provided that the right to a fair trial is upheld. The CJEU also clarified *in CV [Casotta]* (C-24/26 PPU)[87] that higher national standards are permissible provided they do not undermine the primacy, unity, or effectiveness of EU law. Accordingly, national legislation may require direct proof that the accused deliberately avoided the proceedings, before refusing a retrial to a person convicted *in absentia*.

5. Reclassification and judicial independence as dimensions of the presumption of innocence

The issue of reclassifying the offence is relevant not only for the right to information but also in the context of the presumption of innocence. This connection became apparent in *BK* (C-175/22).[88] The CJEU held that, under Art. 6(4) of Directive 2012/13, a criminal court cannot reclassify an offence in its judgment without first informing the accused in due time and giving him an opportunity to effectively defend himself against the new classification. In parallel, the Court, however held that neither the presumption of innocence under Art. 3 nor the privilege against self-incrimination under Art. 7 of Directive 2016/343, nor Art.47 of the Charter, prevent the national court from proposing or adopting a different legal classification, even on its own initiative, provided the accused is properly informed and heard. This case clarifies that judicial initiative in classification does not in itself violate the presumption of innocence; what matters is the preservation of defence rights and procedural fairness.

Finally, in *WB and Others* (C-748/19 to C-754/19), the Court addressed the presumption of innocence in the broader institutional context of judicial independence. It ruled that national provisions allowing the Minister of Justice to second judges to higher courts on the basis of unpublished criteria, and to revoke those secondments at any time without reasons, are incompatible with the second subparagraph of Art. 19(1) TEU, read in the light of Art. 2 TEU, and with Art. 6(1) and (2) of Directive 2016/343.[89]

6. Interim conclusion

Overall, the line of case law on Directive 2016/343 demonstrates gradual but distinct development in the CJEU's understanding of the rights enshrined in the Directive. The early judgments, particularly *Milev* and *DK*, emphasised limitations and confined the Directive to preventing premature expressions of guilt. Subsequent judgments have mostly focused on the right to be present at trial. In this context, the CJEU affirmed the protection of effective participation rather than formal attendance. For convictions *in absentia* either genuine notice and waiver, or a robust right to a fresh determination of the merits are required.

V. Conclusion: A Caselaw Constitution of EU Criminal Procedure

The procedural rights directives following the 2009 Council Roadmap and the ensuing CJEU case law that has developed alongside them are a notable achievement, albeit an imperfect one. Like *Holmes'* and *Cardozo's* narratives, outlined in the introductory remarks of this article, the CJEU has used the directives as building blocks in the broader constitutional framework of "EU fair trial". Predominantly teleological interpretation has been employed to ensure that rights are real and effective, not merely on paper.

Several conclusions can be drawn from the case law analysed in this article. Firstly, the CJEU interprets the autonomous concept of "criminal proceedings" broadly in order to bring them within the scope of the Directives. Secondly, the Court has repeatedly reinforced the obligation for Member States to provide effective remedies; it conferred upon national courts the procedural power to verify compliance with the Directives, even where national procedural law might preclude such review. Thirdly, the Court in Luxembourg has generally interpreted derogations from fundamental rights narrowly. Fourthly, the Court has used the Directives as a framework through which it enforces its own vision of the EU criminal law area, which is based on mutual trust and the rule of law.

Despite these positive features, three systemic tensions persist. Firstly, there is a risk of a negative feedback loop between EU harmonisation and ECtHR case law, as above indicated by *Ibrahim and Others* on derogations from the right to a lawyer. EU procedural rights Directives that codify derogations may prompt the ECtHR to narrow the standards of the European Convention on Human Rights. In *Ibrahim and Others*, the ECtHR re-interpreted its ruling in the *Salduz* case by referring, *inter alia*, to Directive 2013/48. The issue of trials *in absentia* is another example where a real danger of divergence between the system of the EU and that of the Council of Europe exist. Secondly, the analysis demonstrated the lack of proper common admissibility/

exclusionary rules in the EU legal framework. None of the procedural rights Directives adopted until today contain a clear rule on the admissibility of evidence in case of violations of the rights enshrined. The prevailing formula that "the rights of defence must be respected and the overall fairness of proceedings be ensured" is a method of judicial weighing rather than a clear normative standard. The formula instead reinforces divergent and unequal results across EU Member States.[90] Thirdly, there is the "EPPO paradox", meaning that we presume the existence of a substantially harmonised area of criminal procedure by creating supranational bodies (e.g., the EPPO) that lack a real supranational code of criminal procedure.

The creation of a European area of criminal justice, in which defendants across the EU enjoy effective, real, and equivalent procedural protection at a high level, remains a work in progress. Key issues in this context are that some procedural rights Directives provide exceptions (e.g., Directive 2013/48 on the right of access to a lawyer), thus allowing for different interpretation and standards, that the issue of admissibility of evidence in case of violations of rights guaranteed has not been clearly addressed, and that investigative measures and their authorisation remain significantly divergent between EU Member States (e.g., measures on secret surveillance).[91] Only once these issues have been addressed and "checkerboard situations" [92] avoided, we will be able to speak of a genuine area of European criminal justice. This article demonstrated that the CJEU is contributing to this through its evolutionary approach to law; it slowly advances the acquis towards a more far-reaching destination through incremental steps.

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1. O.W. Holmes, *Common Law*, 1881, p. 1.↩
2. Holmes, *op. cit.* (n. 1), p. 5.↩
3. B. N. Cardozo, *The Nature of the Judicial Process*, 2021, pp. 30-31.↩
4. Cardozo, *op. cit.* (n. 3), pp. 14 and 115.↩
5. ECtHR, 25 April 1978, *Tyrer v. United Kingdom,* Appl. no. 5856/72, para. 31.↩
6. ECtHR, 25 February 1993, *Funke v. France*, Appl. no.. 10828/84, para. 44; ECtHR, 17 December 1996, *Saunders v. United Kingdom,* Appl. no. 19187/91, para. 68.↩
7. ECtHR, 1 July 2008, *Liberty and Others v. United Kingdom*, Appl. no. 58243/00, para. 56.↩
8. ECtHR [GC], 9 April 2024, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, Appl. no. 53600/20, para. 573.↩
9. ECtHR [GC], 11 July 2002, Appl. no. 28957/95, *Christine Goodwin v. United Kingdom*, para. 75.↩
10. See G. Conway, *The Limits of Legal Reasoning and the European Court of Justice*, 2012.↩
11. CJEU, 5 February 1963, Case 26/62, *van Gend en Loos* [ECLI:EU:C:1963:1].↩
12. CJEU, 15 July 1964, Case 6/64, *Costa v. ENEL* [ECLI:EU:C:1964:66].↩
13. CJEU, 18 December 2014, Opinion 2/13 [ECLI:EU:C:2014:2454], para. 191.↩
14. CJEU, 16 June 2005, Case C-105/03, *Maria Pupino* [ECLI:EU:C:2005:386], para. 43.↩
15. CJEU, 26 February 2013, Case C-399/11, *Stefano Melloni* [ECLI:EU:C:2013:107], para. 63.↩
16. CJEU, 21 December 2023, Case C-281/22, *G.K. and Others* [ECLI:EU:C:2023:1018], para. 78.↩
17. Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L 283, 31.10.2017, p. 1.↩
18. A. Erbežnik, "The Principle of Mutual Recognition as a Utilitarian Solution, and the Way Forward," (2012) 2(1) *European Criminal Law Review (EuCLR)*, 3-19.↩
19. Proposal for a Council framework Decision on certain procedural rights in criminal proceedings throughout the European Union, COM(2004) 328 final.↩
20. Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, 1.↩
21. Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, 1. For this Directive, see S. Cras and L. De Matteis, "The Directive on Interpretation and Translation in Criminal Proceedings", (2010) *eucrim*, 153–162; M. Kotzurek, "Directive 2010/64/EU on translation and interpretation services in criminal proceedings: A new quality seal or a missed opportunity?", <https://doi.org/10.30709/eucrim-2021-034> accessed 4 August 2026.↩
22. Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, 1. For this Directive, see S. Cras, "The Directive on the Right to Legal Aid in Criminal and EAW Proceedings", (2017) *eucrim*, 34–45; B. Vidal Fernández, "Implementation of the Legal Aid Directive in Spain", (2020) *eucrim*, 55–59.↩
23. Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 1.5.2016, 1. For this Directive, see S. Cras, The Directive on Procedural Safeguards for Children who Are Suspects or Accused Persons in Criminal Proceedings", (2016) *eucrim*, 109–119.↩

24. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, 1.↩
25. US Supreme Court, 13 June 1966, *Miranda v. Arizona*, 384 U.S. 436; see also US Supreme Court, 5 May 1976, *Beckwith v. United States*, 425 U.S. 341, regarding the limitation of the Miranda warning to custodial settings.↩
26. S. Cras and L. De Matteis, "The Directive on the Right to Information, Genesis and Short Description," (2013) *eucrim*, 22-32; A. Pivaty and A. Soo, "Access to the Case Materials in Pre-Trial Stages", (2019) *eucrim*, 60-65.↩
27. CJEU, 19 September 2019, Case C-467/18, *EP (Rayonna prokuratura Lom*) [ECLI:EU:C:2019:765], paras. 42-45.↩
28. CJEU, *EP (Rayonna prokuratura Lom*), *op. cit.* (n. 27), paras. 55-63.↩
29. CJEU, 16 December 2021, Case C-203/20, *AB and Others* [ECLI:EU:C:2021:1016], para. 72.↩
30. CJEU, 28 January 2021, Case C-649/19, *IR (Spetsializirana prokuratura)* [ECLI:EU:C:2021:75], para. 62.↩
31. CJEU, 30 June 2022, Case C-105/21, *IR* [ECLI:EU:C:2022:511], paras. 59-60.↩
32. CJEU, 15 October 2015, Case C-216/14, *Covaci* [ECLI:EU:C:2015:686], para. 68.↩
33. CJEU, 22 March 2017, Joined Cases C-124/16, C-188/16 and C-213/16, *Tranca and Others* [ECLI:EU:C:2017:228], paras. 50-51.↩
34. CJEU, 14 May 2020, Case C-615/18, *UY (Staatsanwaltschaft Offenburg*) [ECLI:EU:C:2020:376], para. 63.↩
35. CJEU, 23 November 2021, Case C-564/19, *IS* [ECLI:EU:C:2021:949], para. 138.↩
36. CJEU, 5 June 2018, Case C-612/15, *Kolev and Others* [ECLI:EU:C:2018:392], paras. 99-100.↩
37. CJEU, 12 February 2020, Case C-704/18, *Kolev and Others II* [ECLI:EU:C:2020:92], para. 57.↩
38. CJEU, 11 June 2026, Case C-342/25, *DS and KW [Stogenchev]* [ECLI:EU:C:2026:469], paras. 50-54.↩
39. CJEU, 21 October 2021, Case C-282/20, *ZX* [ECLI:EU:C:2021:874], para. 32.↩
40. CJEU, *ZX, op. cit.* (n. 39), para. 45.↩
41. CJEU, 13 June 2019, Case C-646/17, *Moro* [ECLI:EU:C:2019:489], para. 74.↩
42. CJEU, 25 May 2023, Case C-608/21, *XN (Politseyski organ pri 02 RU SDVR*) [ECLI:EU:C:2023:426], paras. 58 and 76.↩
43. CJEU, 22 June 2023, Case C-660/21, *K.B and F.S.* [ECLI:EU:C:2023:498], paras. 40-41.↩
44. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, 1.↩
45. ECtHR [GC], 13 September 2016, Appl. nos. 50541/08, 50571/08, 50573/08 and 40351/09, *Ibrahim and Others v. United Kingdom*, para. 259.↩
46. ECtHR [GC], 27 November 2008, Appl. no. 36391/02, *Salduz v. Turkey*, para. 55.↩
47. ECtHR [GC], 20 October 2015, Appl. no. 25703/11, *Dvorski v. Croatia*, paras. 100-102.↩
48. S. Cras, "The Directive on the right of access to a lawyer in criminal proceedings and in European arrest war-rant proceedings," (2014) *eucrim*, 32-44; A. Soo, "(Effective) Remedies for a Violation of the Right to Counsel during Criminal Proceedings in the European Union: An Empirical Study," (2018) 14(1) *Utrecht Law Review*, 18-60; A. Soo, "How are the member states progressing on transposition of Directive 2013/48/EU on the right of access to a lawyer?: An inquiry conducted among the member states with the special focus on how Article 12 is transposed", (2017) 8(1) *New Journal of European Criminal Law (NJECL)*, 64-76.↩
49. CJEU, *EP (Rayonna prokuratura Lom*), *op. cit.* (n. 27), para. 54.↩
50. CJEU, 7 September 2023, Case C-209/22, *AB (Rayonna prokuratura Lovech*) [ECLI:EU:C:2023:634], paras. 33-45, in particular para. 39.↩
51. CJEU, *AB, op. cit.* (n. 50), paras. 46-61.↩
52. CJEU, *AB, op. cit.* (n. 50), paras. 73-78.↩
53. CJEU, 14 May 2024, Case C-15/24 PPU, *CH (Stachev)* [ECLI:EU:C:2024:399], para. 54-70.↩
54. CJEU, *CH, op. cit.* (n. 53), para. 80.↩
55. CJEU, 12 March 2020, Case C-659/18, *VW* [ECLI:EU:C:2020:201], paras. 43-48.↩
56. European Commission, Report on the implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third person informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (COM/2019/560 final).↩
57. ECtHR [GC], *Dvorski v. Croatia*, *op. cit.* (n. 47), paras. 103-113.↩
58. CJEU, *Kolev and Others*, *op. cit.* (n. 36), para. 111.↩
59. CJEU, *CH, op. cit.* (n. 53), paras. 46-53.↩
60. CJEU, *K.B and F.S., op. cit.* (n. 43), para. 53.↩
61. CJEU, 15 September 2022, Case C-347/21, *DD* [ECLI:EU:C:2022:692], para. 46.↩
62. CJEU, *CH, op. cit.* (n. 53), para. 99.↩
63. CJEU, 8 May 2025, Case C-530/23, *K.P. (Barało)* [ECLI:EU:C:2025:322], para. 92.↩
64. CJEU, *K.P., op. cit.* (n. 63), para. 108.↩
65. Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1.↩
66. ECtHR [GC], 8 February 1996, Appl. no. 18731/91, *John Murray v. United Kingdom*, para. 47.↩
67. S. Cras and A. Erbežnik, "The Directive on the Presumption of Innocence and the Right to Be Present at Trial, Genesis and description of the new EU-Measure," (2016) *eucrim*, 25-36; A. Pivaty *et al.* , "Opening Pandora's box: The right to silence in police interrogations and the Directive 2016/343/EU," (2021) 12(3) *New Journal of European Criminal Law (NJECL)*, 328-346; see also European Commission, Report on the implementation of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, COM/2021/144 final.↩

68. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, OJ L 81, 27.3.2009, 24.↩
69. CJEU, 19 September 2018, Case C-310/18 PPU, *Emil Milev* [ECLI:EU:C:2018:732], para. 49.↩
70. CJEU, 28 November 2019, Case C-653/19 PPU, *DK (Spetsializirana prokuratura)* [ECLI:EU:C:2019:1024], para. 42.↩
71. CJEU, *EP, op. cit.* (n. 27), paras. 54, 68. However, the Directive does not apply to purely therapeutic psychiatric committal proceedings.↩
72. CJEU, 5 September 2019, Case C-377/18, *AH and Others* [ECLI:EU:C:2019:670], para. 50.↩
73. CJEU, 30 April 2026, Case C-748/24, *AC (Kotaňák)* [ECLI:EU:C:2026:358], paras. 61-80.↩
74. CJEU, 13 February 2020, Case C-688/18, *TX and UW* [ECLI:EU:C:2020:94], para. 49.↩
75. CJEU, *DD, op. cit.* (n. 61), para. 46.↩
76. CJEU, 8 December 2022, Case C-348/21, *HYA and Others* [ECLI:EU:C:2022:965], para. 62.↩
77. CJEU, 15 September 2022, Case C-420/20, *HN* [ECLI:EU:C:2022:679], paras. 43 and 66.↩
78. CJEU, *HN, op. cit.* (n. 77), paras. 51-58. See also CJEU, 21 May 2026, Case C-95/24, *ATAU (Khuzdar)* [ECLI:EU:C:2026:416], paras. 67-69, and CJEU, 21 May 2026, Case C-447/24, *SO (Höldermann)*, [ECLI:EU:C:2026:417], paras. 75-77, regarding the same interpretation of Framework Decision 2008/909.↩
79. CJEU, 19 May 2022, Case C-569/20, *IR* [ECLI:EU:C:2022:401], para. 59.↩
80. CJEU, 17 December 2020, Case C-416/20 PPU, *TR (Generalstaatsanwaltschaft Hamburg)* [ECLI:EU:C:2020:1042], para. 56.↩
81. CJEU, 16 January 2025, Case C-644/23, *IR (Stangalov)* [ECLI:EU:C:2025:16], para. 52. See also T. Wahl, "ECJ Ruled on Right to New Trial if Suspect Absconds", *eucrim* 4/2024, 288-289.↩
82. CJEU, 20 May 2025, Case C-135/25 PPU, *M.S.T. (Kachev)* [ECLI:EU:C:2025:366], para. 71.↩
83. CJEU, 8 June 2023, Joined Cases C-430/22 and C-468/22, *VB and VB* [ECLI:EU:C:2023:458], para.31.↩
84. CJEU, 16 January 2025, Case C-400/23, *VB II* [ECLI:EU:C:2025:14], para. 75.↩
85. For an analysis of this ruling, see J. Callewaert, "A Different Understanding of the Waiver of the Right to Attend Trial – Judgment of the CJEU in the Case of VB II", < https://johan-callewaert.eu/a-different-understanding-of-the-waiver-of-the-right-to-attend-trial-judgment-of-the-cjeu-in-the-case-of-vb-ii/> (accessed 4 August 2026), who submits that the judgment in *VB II* transforms the right to a new trial into a procedural consequence of non-compliance with the conditions set out in Art. 8(2), rather than a safeguard linked to the ECtHR's case law focusing on the fairness of the proceedings, and thus reinforces the objectivised, condition-based structure of the Directive. See also T. Wahl, "ECJ Rules on Conditions for in absentia Judgments", *eucrim* 4/2024, 287-288.↩
86. CJEU, 4 July 2024, Case C-760/22, *FP and Others* [ECLI:EU:C:2024:574], para. 32.↩
87. CJEU, 23 April 2026, Case C-24/26 PPU, *CV [Casotta]* [ECLI:EU:C:2026:333], paras.114-118.↩
88. CJEU, 9 November 2023, Case C-175/22, *BK* [ECLI:EU:C:2023:844], paras. 55-61.↩
89. CJEU, 16 November 2021, Joined Cases C-748/19 to C-754/19, *WB and Others* [ECLI:EU:C:2021:931], para. 90.↩
90. See. European Law Institute, "Proposal for a Directive of the European Parliament and the Council on Mutual Admissibility of Evidence and Electronic Evidence in Criminal Proceedings", <https://www.europeanlawinstitute.eu/projects-instruments/instruments/eli-proposal-for-a-directive-of-the-european-parliament-and-the-council-on-mutual-admissibility-of-evidence-and-electronic-evidence-in-criminal-proceedings/> (accessed 4 August 2026), which tried to establish such rules by an academic proposal. For the proposal, see also L. Bachmaier, "Mutual Admissibility of Evidence and Electronic Evidence in the EU – A New Try for European Minimum Rules in Criminal Proceedings?", (2023) *eucrim*, 223-229.↩
91. In that regard, the Commission is trying to achieve a certain level of harmonisation through cross-border rules, as set out in the recent proposed changes to cross-border surveillance measures foreseen in the proposed amendments to Directive 2014/41 regarding the European Investigation Order: Proposal for a Directive of the European Parliament and the Council regarding the European Investigation Order in criminal matters and the European Remote Participation Order (recast), COM(2026) 313 final, e.g., Arts. 30, 33 and 34.↩
92. Dworking used the term "checkerboard laws" to describe situations where inside the same legal area contradictory perceptions exist. R. Dworkin, *Law's Empire*, Harvard University Press, 2001, pp. 179-186. See also A. Erbežnik, (2012) 2(1) *EuCLR*, *op. cit.* (n. 18).↩

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