Justice Systems Built on Confidence

The CCBE Proposal on the Future of EU Criminal Justice

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Article

ABSTRACT

The 2025 High-Level Forum on the Future of EU Criminal Justice, aimed at developing a shared vision for the Union's future criminal-policy agenda, brought together over one hundred participants, including the Council of Bars and Law Societies of Europe (CCBE) and the European Criminal Bar Association (ECBA).

In this context, the CCBE submitted an extensive proposal, arguing that mutual recognition and judicial cooperation can only function sustainably if they are based on robust procedural safeguards that can be effectively enforced. To this end, the CCBE proposed the adoption of a new roadmap on procedural rights on the basis of Art. 82 TFEU, setting out a detailed legislative programme across four areas: (i) judicial cooperation and mutual recognition, (ii) procedural safeguards, (iii) EU agencies and bodies, and (iv) the digitalisation of criminal justice.

This article systematically presents the main strands of this proposal. In particular, it examines the reforms proposed for the European Arrest Warrant and the European Investigation Order, as well as the need for common rules on pre-trial detention and exclusionary rules for unlawfully obtained evidence. It also considers defence investigations, the strengthening of professional secrecy and legal professional privilege (attorney-client privilege), and defence safeguards in the functioning of Eurojust, Europol, and the European Public Prosecutor's Office. Lastly, it addresses the requirement for a fundamental rights-centred approach to the deployment of artificial intelligence and videoconferencing in European criminal proceedings.

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I. Introduction: The High-Level Forum and the Voice of the European Legal Profession

At the beginning of 2025, the European Commission launched the High-Level Forum on the Future of EU Criminal Justice as a space for strategic reflection on the current state of European criminal justice and the regulatory priorities for a new institutional cycle after 2024. The Forum's remit focused on four interconnected areas: substantive criminal law; criminal procedure (including mutual recognition instruments); the digitalisation of criminal justice; and the role of EU agencies and bodies.

Four plenary meetings were held in 2025: on 4/5 March, 20/21 May, 1/2 October, and 1 December. These meetings brought together high-level representatives from the EU Member States, the Commission, the Council, and the European Parliament, as well as bodies and agencies such as the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), Eurojust, Europol, the European Judicial Network (EJN), eu-LISA, and the European Union Agency for Fundamental Rights. They were joined by organisations representing civil society and justice professionals, including the European Criminal Bar Association (ECBA), the Council of Bars and Law Societies of Europe (CCBE)[1], the Confederation of European Probation, EuroPris, and the NGO Fair Trials. Leading academic experts in European criminal law and criminal procedure also participated.[2]

The CCBE, which represents the national bars and law societies of the EU Member States and other European countries at European and international levels and is regarded as the voice of the European legal profession (representing more than one million lawyers), played an active role in both the plenary sessions and in the technical debates.

In addition to oral interventions at the plenary meetings, the CCBE also contributed a written paper containing concrete proposals designed to ensure that the Union's future criminal justice policies strike the right balance between effective criminal prosecutions and the essential role of lawyers in safeguarding the rule of law and protecting fundamental rights. The paper was entitled "CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice" and was submitted on 8 October 2025.[3]

It should be emphasised that the Forum is not a decision-making body. Nevertheless, its conclusions[4] inform the Commission's considerations when drafting legislative and non-legislative recommendations. From the CCBE's perspective, the process provides a unique opportunity to place defence rights and procedural safeguards at the centre of the next phase of development of the European criminal justice system.

Against this background, the present article summarises and analyses the CCBE's proposal. Particular attention is devoted to the call for a new roadmap on procedural safeguards, targeted reforms of some of the most emblematic cooperation instruments, the role of European criminal justice agencies, and the challenges raised by the digitalisation of criminal justice.

II. The Post-Lisbon Constitutional Framework and the Need for a New Roadmap

1. The Charter of Fundamental Rights, the ECHR, and the mutual recognition principle

The CCBE's contribution is expressly grounded in the constitutional context established by the Treaty of Lisbon.

First, it relies on the Charter of Fundamental Rights of the European Union (CFR), which has the same legal value as the Treaties. Accordingly, its provisions are binding on both EU institutions and bodies – including the EPPO – and the Member States when they implement EU law. This is without prejudice to the fact that the rights guaranteed by the European Convention on Human Rights (ECHR) continue to constitute a minimum level of protection within the European legal space.

Second, the Lisbon Treaty enshrines mutual recognition of judicial decisions as the cornerstone of the Area of Freedom, Security and Justice in Arts. 67 and 82 TFEU. Mutual recognition is based on mutual trust across the Member States' judicial systems. However, this trust can only be regarded as justified where all national systems ensure comparable levels of fundamental rights protection in criminal proceedings.

Experience accumulated over more than two decades of European criminal cooperation shows that, in the absence of minimum standards, mutual recognition can lead to an almost irrebuttable presumption of uncritical acceptance of other states' decisions, even where there are serious indications of rights violations. From an institutional standpoint of the legal profession, trust cannot be imposed unconditionally; it must be built on effective guarantees.

2. From the 2009 Roadmap to a new agenda: "Justice systems built on confidence"

The 2009 Roadmap on procedural rights was a significant achievement, leading to the adoption of six key directives on interpretation and translation, information of rights, access to a lawyer, the presumption of innocence, legal aid, and specific safeguards for suspected or accused children. However, it has acknowledged that the programme remained incomplete, with new areas of vulnerability emerging in light of the technological evolution and the growing complexity of criminal cooperation.

In this context, the CCBE proposes the adoption of a new roadmap on procedural safeguards based on Art. 82 TFEU, built around the concept of "justice systems built on confidence".[5] The gradual approach of the 2009 Roadmap, which advanced through thematic instruments covering specific aspects of criminal proceedings, remains an appropriate model. The CCBE's proposal underlines that robust procedural safeguards are not an obstacle to effective prosecution, but rather a prerequisite for legally sound convictions, reduced miscarriages of justice, and strengthened public trust in criminal justice. A system that sacrifices safeguards in the name of speed will, in the medium term, generate more litigation, more appeals, and more distrust, including among the authorities of different states when they are required to recognise one another's decisions.[6]

The CCBE also cautions against the limitations of soft-law tools, such as recommendations, guidelines, best practices, and training. While such instruments can be valuable supporting measures, fundamental rights

can only be effective and accessible if they are enshrined in clear, binding rules, rather than being left to administrative discretion or the goodwill of practitioners.[7]

III. Judicial Cooperation and Mutual Recognition in Criminal Matters

A central place within the agenda proposed by the CCBE is occupied by the review of the most paradigmatic mutual recognition instruments: the European Arrest Warrant and the European Investigation Order. The underlying thesis is that the effectiveness of these instruments hinges on the strength of the procedural safeguards that accompany them.

1. The European Arrest Warrant: towards a second generation

The European Arrest Warrant (EAW) is undoubtedly one of the most effective instruments of cooperation in criminal matters within Europe. Its implementation represented a qualitative leap compared with traditional extradition procedures. However, the CCBE underlines that the EAW still reflects, to a significant extent, the political and legal climate in the aftermath of the 09/11 attacks , when security concerns tended to take precedence over considerations regarding safeguards for the individual.[8]

From this perspective, the CCBE is calling for a second generation of the EAW that will fully incorporate the case law of the Court of Justice of the European Union (CJEU), the acquis developed around the Stockholm procedural-rights roadmap, and the requirements of the Charter of Fundamental Rights. The CCBE identifies several structural shortcomings:

- Uneven protection of fundamental rights. The application of refusal grounds linked to fundamental rights varies widely among Member States. Effective protection often requires lengthy appeal proceedings, prolonging the deprivation of liberty of the requested person;[9]
- Weak proportionality control. EAWs are often issued for minor offences, for very old facts, or investigations at an early stage, leading to unnecessary arrests and the de facto use of pre-trial detention as a default measure;[10]
- Insufficient use of alternatives. Instruments such as the European Investigation Order or the European Supervision Order (ESO) are used to a very limited extent, even though they would allow the same objectives to be achieved with less impact on personal liberty;[11]
- Detention conditions and monitoring of assurances. The practice of relying on assurances regarding detention conditions communicated by the issuing State, without effectively monitoring compliance, is insufficient in light of the CJEU's case law;[12]
- Schengen Information System (SIS) alerts and compensation. The maintenance of alerts in the SIS without systematic review[13] and the absence of a harmonised compensation framework for wrongful detention in the EAW context[14] raise concerns over legal certainty.

To remedy these dysfunctions, the CCBE proposes, *inter alia,* the following:

- Codifying refusal grounds based on fundamental rights in line with the CJEU's case law, including a rigorous assessment of whether there is a real and individualised risk of serious rights violations[15];

- Strengthening proportionality by requiring the issuing authority to consider less intrusive alternatives before issuing an EAW and by excluding manifestly disproportionate cases;
- Promoting the effective use of the European Investigation Order and the Supervision Order as alternatives to surrender, to avoid routine recourse to deprivation of liberty;
- Establishing mechanisms for periodic review of SIS alerts and a harmonised regime of compensation for wrongful or manifestly disproportionate detention within the EAW framework.

The objective is not to weaken the EAW, but rather to anchor the instrument firmly in the protection of fundamental rights, ensuring that mutual trust is based on effective guarantees.

2. The European Investigation Order: rebalancing equality of arms

From a defence perspective, the European Investigation Order (EIO) raises certain problems that are less apparent than those of the EAW, yet equally significant. The CCBE's assessment is that there is a structural asymmetry in favour of the prosecution. This asymmetry manifests itself in several ways:[16]

- The intensity of judicial review of EIOs varies significantly between Member States; defence remedies are limited and affected persons are not always informed of the existence of an EIO;
- Access to supporting documentation is often restricted by investigation secrecy;
- Cross-border surveillance and data interception frequently expose divergences between national standards of privacy protection, which fosters *forum shopping*.[17]

Added to this are delays in the execution of EIOs, which jeopardise the right to proceedings within a reasonable timeframe and may compromise the very usefulness of the requested investigative measures.

To address these challenges, the CCBE proposes, in particular:

- Strengthening defence participation and remedies. The defence should have access to the EIO and supporting documentation, be heard on execution where appropriate, and have an effective remedy in both the issuing and executing states;[18]
- Introducing a system of dual legal representation mirroring the EAW scheme,[19] so that the person concerned is entitled to counsel in both legal orders;[20]
- Setting clearer execution timelines and legal consequences for unjustified delays, linked to the right to trial within a reasonable timeframe;[21]
- Clarifying the consequences of unlawful data interception or failure to notify affected persons through explicit exclusionary rules or equivalent safeguards;[22]
- Incorporating the principle of speciality into the EIO framework, in line with the recommendations set out in the reports of mutual evaluation on mutual recognition.[23]

IV. Strengthening Procedural Safeguards in the European Criminal Justice Area

The CCBE's contribution identifies several priority areas in which the EU should take legislative action to establish minimum standards for the protection of fundamental rights in criminal proceedings.

1. Pre-trial detention and detention conditions

Prison overcrowding and the disparity of detention conditions across Member States raise serious concerns in relation to the presumption of innocence, human dignity, and the right to a fair trial. [24]

The CCBE endorses the fundamental principle that pre-trial detention must be a measure of last resort, to be employed only where no less onerous measure can secure the legitimate aims of the proceedings.

In line with this approach, the European legal profession's contribution, pursuant to Art. 82(2) TFEU, proposes the following:

- **The establishment of a sentencing threshold** as a condition for authorising pre-trial detention, together with the requirement for **sufficient grounds**, beyond mere suspicion, of the commission of an offence and of the suspect's or accused person's responsibility; in addition, an **adequate standard** for assessing the risks that pre-trial detention is intended to prevent should be established; [25]
- **The setting of maximum time limits** on the duration of pre-trial detention, taking into account the complexity of a case, while preventing situations of prolonged deprivation of liberty in the absence of a final conviction; [26]
- **The decisive promotion of alternatives** such as conditional provisional release, electronic monitoring, or the **European Supervision Order**, which are capable of replacing pre-trial detention or reducing its length; [27]
- **The adoption of binding minimum standards on detention conditions** across the Union, insofar as they have a direct impact on the functioning of mutual recognition, particularly in relation to the **EAW**.[28]

These minimum standards should address issues such as contact with family members, access to legal and medical assistance, hygiene and nutrition, and cell size. More generally, they should also cover all aspects relating to respect for human dignity in places of detention.

The CCBE also proposes the innovative measure of recognising **inspection powers** for deans of bar associations and their delegates, enabling the verification of detention conditions first-hand to engage in a structured dialogue with penitentiary authorities. [29] It also advocates establishing a **European preventive mechanism**, inspired by national mechanisms as set out in the 2002 Optional Protocol to the UN Convention against Torture. Unlike the usual practice of the European Committee for the Prevention of Torture, this mechanism would have the power to conduct **unannounced inspections**.[30]

The message is clear: improving detention conditions and reducing recourse to pre-trial detention are not only fundamental rights imperatives, but also an indispensable prerequisite for the credibility of mutual recognition in criminal matters—a point not remedied by the non-binding Recommendation 2023/681[31].[32]

2. Exclusionary rules: closing a critical gap

According to the CCBE, one of the most striking deficits of the Union's current criminal procedural acquis is the absence of common minimum rules on the exclusion of unlawfully obtained evidence, despite Art. 82(2)(a) TFEU expressly envisaging the adoption of rules on the mutual admissibility of evidence.

In a European criminal justice area where evidence circulates relatively easily between Member States, the lack of shared criteria governing the consequences of rights violations when evidence is gathered generates

profound legal uncertainty. This has become particularly evident in recent cases involving the mass collection of electronic communications data, such as the well-known "EncroChat" and "Sky ECC" cases.[33]

In this context, the CCBE identified several problems:[34]

- There is no general obligation under EU law to exclude evidence obtained through serious violations of fundamental rights;
- National legal systems adopt markedly divergent approaches, ranging from near-automatic exclusion of evidence to broad admissibility subject to subsequent balancing of interests;
- In practice, the principle of "non-interference" is frequently applied, meaning that evidence obtained in accordance with the law of the place of collection is admitted in the criminal proceedings of the forum even if this would breach the safeguards established by the latter;
- The procedural remedies available to the defence to challenge the lawfulness of cross-border evidence are fragmented and largely ineffective.

Based on these findings, the CCBE endorses a proposal developed by the European Law Institute, which combines two elements:[35] (1) the application of the *lex loci regit actum* principle, whereby evidence is deemed lawful if obtained in accordance with the law of the place of collection, subject to verification by the authorities and the defence in the forum; and (2) a safeguard clause permitting exclusion where the use of the evidence in the forum would conflict with its fundamental constitutional principles.[36]

Additionally, and in accordance with the ECtHR's case law, the CCBE's contribution asserts that certain categories of evidence should be considered absolutely inadmissible in all circumstances. This includes evidence obtained by torture or ill-treatment; evidence gathered in violation of the privilege against self-incrimination; and evidence secured through deception that gravely undermines the person's free will.

Regarding other interferences with rights, the CCBE calls for the adoption of common proportionality criteria, inspired by the CJEU's doctrine and certain national experiences. These criteria include:[37]

- A clear legal basis for the measure;
- Prior judicial authorisation or, if this is not possible, immediate judicial ratification;
- Specificity of the measure as regards the person under investigation and the relevant facts;
- Exceptionality of the measure meaning that less intrusive measures are unavailable;
- Necessity and proportionality *stricto sensu*.

The purpose of this framework is not to fully harmonise national evidentiary rules, but rather to establish a minimum core of protection against the circulation of evidence obtained under weaker safeguards, thereby preventing criminal cooperation from becoming a means of "importing" lower standards.

3. Professional secrecy and legal professional privilege/attorney–client privilege

Professional secrecy and legal professional privilege/attorney–client privilege occupy a central place in the CCBE's proposal. While there is a general agreement on their importance in the abstract, national regimes differ significantly in terms of their substantive scope, legal force, and practical application,[38] particularly in contexts involving the fight against organised crime or terrorism.

The contribution recalls that the CJEU has long recognised the confidentiality of communications between lawyers and clients as a general principle of EU law,[39] and that the case law of both the CJEU and the ECtHR – interpreting Arts. 7 and 47 of the Charter and Art. 8 ECHR – underscores its structural role in the right to a fair trial.[40]

However, the absence of any specific EU-level regulation leaves Member States a wide margin of discretion. Recent events in certain countries — including the *Kulák v Slovakia* case before the ECtHR[41] – demonstrate that, without a common framework, the protection of professional secrecy can be undermined by search, seizure or interception practices that treat lawyers as sources of information about their clients.[42]

The CCBE therefore proposes the adoption of minimum standards under Art. 82 TFEU that address, inter alia, the following:[43]

- Searches of law offices, with reinforced safeguards regarding judicial authorisation, the presence of representatives of the Bar, and document-filtering (screening) mechanisms;
- An explicit rule rendering inadmissible evidence obtained in breach of professional secrecy, with clear exclusionary effects;
- Specific guarantees for situations in which lawyers are involved as witnesses or even as suspects, to prevent the lawyer's position from being used to undermine the privilege attaching to other clients.

These orientations are structured around six principles elaborated by *Holger Matt* and taken up in the CCBE's proposal: [44]

- Strong legal protection of professional secrecy;
- Absolute confidentiality in criminal defence matters;
- Strict limits on client waivers of privilege;
- Reinforced procedural safeguards (sealing of documents, intervention by the Bar, and screening mechanisms);
- A client's right to remain silent regarding privileged communications;
- Extension of protection to lawyers' collaborators and staff.

4. The presence of counsel during searches and seizures

The effectiveness of defence rights should not be confined to the trial hearing; it must also extend to critical stages of the investigation, such as searches and seizures of homes, offices, or electronic devices.

While Directive 2013/48/EU recognises the right of access to a lawyer during certain investigative measures, many national legal systems interpret its catalogue restrictively and do not acknowledge a clear right for counsel to be present during searches.[45]

The CCBE contends that this practice accords neither with the letter nor with the spirit of the Directive, nor with the CJEU's and the ECtHR's case law.[46] Searches expose the person concerned to risks of self-incrimination and are often conducted in contexts of intense emotional pressure. In such circumstances, information about rights, including the right to remain silent under Directive 2012/13/EU, may be purely formal in the absence of effective legal advice.

In this regard, the contribution proposes amending Directive 2013/48/EU so as to explicitly include searches and seizures in the list of measures during which the suspect or accused has (at minimum) a right to the presence of counsel. Practical objections, namely the need to commence a search without delay, can be addressed through a balanced design combining the following points:[47]

- An obligation to notify known counsel of the imminent search;
- The right of the person concerned to request the appointment of a lawyer if none has yet been instructed;
- The possibility of commencing the search immediately, even before counsel arrives, provided that the opportunity for subsequent review is preserved and that the measure is properly documented.

This ensures a reasonable balance between investigative needs and the protection of defence rights at a particularly sensitive stage.

5. Defence investigations

The CCBE's contribution devotes specific attention to defence investigations, the possibility and legal validity of which are regarded as an essential component of the principle of equality of arms.[48] In many legal systems, the existing normative and practical framework is strongly oriented towards prosecution-led investigation, whereas the defence lacks a clear framework for gathering evidence on its own initiative.[49]

In the absence of regulation, evidence obtained by the defence may be deemed inadmissible or "unlawful", which discourages its collection and weakens the adversarial nature of proceedings.[50] In this regard, the CCBE refers to the ECtHR judgment in *Vasaráb and Paulus v Slovakia*, in which the conviction was based exclusively on prosecution evidence and none of the defence's numerous evidentiary requests were admitted.[51]

Against this background, the CCBE argues that properly regulated defence investigations could entail the following:[52]

- Enhance the effectiveness and fairness of proceedings by enabling the confrontation of alternative accounts of the facts;
- Reduce the workload of public authorities by enabling certain measures to be initiated directly by the defence and then reviewed under judicial oversight;
- Facilitate early resolution of cases by providing the defence with objective information with which to advise clients realistically about procedural risks.

Accordingly, the proposal calls for a European framework that recognises the right of defence counsel to conduct investigations in both domestic and cross-border proceedings and that establishes clear criteria for the admissibility of evidence thus obtained. The ultimate aim is to incorporate the adversarial process model more coherently into the European criminal justice system for the benefit of equality of arms.

6. Freezing and confiscation of assets

The CCBE's contribution also examines the framework established by Directive 2014/42/EU governing the freezing and confiscation of instrumentalities and proceeds of crime in the EU.[53] The main criticism concerns is that, while the Directive requires the immediate return of frozen assets which are ultimately not confiscated, it leaves to national legislation the determination of the specific conditions for restitution, the maximum duration of freezing measures, and the rules on compensation for harm caused.[54]

This lack of harmonisation raises significant concerns regarding legal certainty and equal treatment. Notably, it could lead to substantial interference with the right to property, for instance if bank accounts, business assets or property necessary for the exercise of a profession are frozen for prolonged periods without a commensurate compensation regime.

The CCBE proposes that the Union address these shortcomings through the following measures:[55]

- Setting maximum time limits for freezing measures, calibrated to the procedural stage and the complexity of the case, yet always designed to avoid the unjustified prolongation of interference;
- Establishing minimum compensation standards, including an automatic baseline indemnity calculated as an annual percentage of the value of the frozen asset, where the freezing measure ends without confiscation, with the possibility of higher compensation where the owner substantiates greater loss.

This scheme aims to strike an appropriate balance between the need for effective tools to recover criminal assets and protecting property rights and ensuring legal certainty for those affected, particularly in cross-border contexts where delays inherent in mutual recognition may extend the duration of freezing measures.

7. Conflicts of jurisdiction and legal certainty

In the CCBE's words, the determination of the competent jurisdiction is the "starting point" for the protection of human rights and procedural safeguards, given that the level of protection can vary significantly between Member States.[56] Nevertheless, the current framework for conflicts of jurisdiction, structured around Framework Decision 2009/948/JHA[57], relies on voluntary consultations between authorities and lacks binding resolution mechanisms.

In the CCBE's view, this system facilitates the following:[58]

- Forum shopping, whereby authorities select the jurisdiction most favourable to their interests;
- Situations of legal uncertainty for persons under investigation who may face parallel proceedings;
- Potential infringements of the *ne bis in idem* principle;
- Practical inefficiencies where no authority is willing to assume responsibility for the case.

It is notable that the Union has adopted a detailed Regulation on jurisdictional conflicts in civil and commercial matters (Regulation 1215/2012);[59] yet in criminal matters, the issue is left to a soft-cooperation instrument, supplemented by non-binding Eurojust guidance.

Against this background, the CCBE proposes the adoption of a Regulation on conflicts of jurisdiction in criminal matters, establishing the following:[60]

- Clear criteria for the allocation of jurisdiction, inspired by principles, such as proximity, the unity of proceedings, and the protection of the affected person;
- An obligation to adopt a formal judicial decision on jurisdiction, challengeable both by the person under investigation and, where applicable, by the victim;
- Mechanisms designed to prevent forum shopping and to ensure respect for the *ne bis in idem* principle throughout the Area of Freedom, Security and Justice.

Such an instrument would make a decisive contribution to strengthening legal certainty – a core element of the rule of law – and, consequently, mutual trust between national systems.

V. EU Agencies and Bodies: Transparency, Oversight, and Defence Rights

The third part of the CCBE's contribution focuses on the role of Eurojust, Europol, and the European Public Prosecutor's Office (EPPO) within the Union's criminal justice architecture.

While their important contribution to combating serious cross-border crime is acknowledged, a number of reservations are expressed regarding transparency and defence safeguards in relation to their activities.[61]

The principal challenges identified are:[62]

- The existence of interventions that significantly affect the situation of suspects or accused persons, such as coordination decisions, recommendations on jurisdiction, or the identification of investigative targets, which are not adequately documented or accessible to the parties;
- The lack of clarity and of specific safeguards governing data exchanges between Eurojust, the EPPO, Europol, and national authorities;
- The fragmentation of oversight mechanisms and the presence of grey areas of responsibility in complex operations involving multiple actors.

Far from advocating unrestricted access to sensitive operational information, the CCBE argues that interventions by these agencies that have a material impact on individuals' rights should be subject to standards of documentation, reasoning, and review compatible with Art. 47 of the Charter (the right to an effective remedy).

In particular, the CCBE's contribution recommends that any initiative aimed at strengthening the role of Eurojust or the EPPO should be accompanied by:[63]

- Explicit recognition of defence rights and equality of arms within their legal frameworks;
- An obligation to formally record interventions affecting a person's procedural position, so that the chain of decisions can be reconstructed;
- The creation of access mechanisms enabling lawyers to request clarification or to challenge the agency's action(s) before a competent authority, thereby preventing potential rights violations;
- The consolidation of safeguards in data exchanges to ensure that any transfer and use of information complies with the principles of legality, purpose limitation, proportionality, and legal certainty;
- The establishment or reinforcement of independent oversight bodies with specific fundamental rights competences, which are particularly relevant in contexts involving the large-scale processing of digital data;
- The possibility of resorting to a "special advocate" or "special counsel", who is independent of the main defence but subject to judicial control, to examine sensitive information whose direct disclosure to the parties might compromise ongoing investigations;

- The establishment of a complaints mechanism that allows affected individuals to challenge unjustified or disproportionate interventions by Eurojust or the EPPO.

These proposals reflect a basic logic: the greater the operational weight of European criminal agencies in prosecutorial practice, the greater the density of defence safeguards, transparency mechanisms, and avenues of accountability must be.[64]

VI. Digitalisation of Criminal Justice: Artificial Intelligence and Videoconferencing

The fourth and final part of the CCBE contribution addresses the challenges posed by the digitalisation of criminal justice. It pays particular attention to the use of artificial intelligence (AI) tools and the increasing acceptance of videoconferencing in criminal proceedings, including cross-border ones.

1. Artificial intelligence in criminal proceedings

The CCBE acknowledges the potential of AI and other digital tools to enhance the efficiency of criminal justice, for example, by screening large volumes of data, conducting forensic analysis of electronic devices, and identifying behavioural patterns. It cautions, however, that deploying them in criminal law contexts entails significant risks for fundamental rights, equality of arms, and the integrity of proceedings.

As regards digital and AI-derived evidence, the CCBE calls for the adoption of EU rules that ensure:[65]

- Clear reliability and transparency criteria for the tools employed, including sufficient information on their methodologies and margins of error;
- Rigorous preservation of the data chain of custody, from collection through to presentation at trial;
- The defence's right to access, review, and challenge evidence generated or processed by AI systems, including access to relevant technical documentation to the extent necessary for the effective exercise of adversarial proceedings.

The CCBE further stresses that judicial decision-making must remain in human hands.[66] AI may perform support functions, such as organising information, flagging patterns, and suggesting hypotheses, but it must not replace human judgment or erode the judge's personal responsibility. Under no circumstances should AI tools be used in ways that undermine the presumption of innocence, the right to privacy, data protection, or the confidentiality of lawyer–client communications. The CCBE rejects the use of predictive techniques in criminal investigations.[67]

In line with these principles, the CCBE advocates for the establishment of a specific regulatory framework for the use of AI in criminal justice that is grounded in human rights, transparency, and accountability. It also calls for the prohibition of high-risk technologies, such as certain forms of predictive AI and profiling in criminal matters, as these technologies may generate structural biases and opaque decisions that are difficult to subject to effective scrutiny.[68]

2. Videoconferencing in cross-border criminal proceedings

Videoconferencing has become a widely used tool in criminal proceedings, both domestic and cross-border, particularly in the wake of the COVID-19 pandemic. Its advantages in terms of saving time and costs are

evident. The CCBE cautions, however, against a trend towards normalising its use, as this could undermine fundamental safeguards.[69]

The positions set out in the contribution can be summarised as follows:[70]

- Videoconferencing should be the exception in hearings on the merits. It should not be used for budgetary reasons alone, nor where there are well-founded doubts as to its compatibility with a fair trial;
- Its use should be conditional upon informed consent by the accused, with access to legal advice, and the right to challenge decisions to hold a remote hearing;
- Harmonised safeguards must be established to protect the confidentiality of lawyer–client communications during videoconference hearings. The unlawful interception of such communications should be criminalised;
- The physical presence of counsel alongside the accused plays a crucial role in preventing pressure or intimidation, especially where the accused is in custody. The ability to examine witnesses face-to-face should not be sacrificed where it is necessary to the fairness of the proceedings;
- It is essential to establish minimum technical standards at Union level to ensure the most faithful reproduction possible of in-person interaction, including: adequate audio and video quality to capture nuances of testimony and body language; secure transmission and document management systems; and the presence of an independent person, such as a court officer, alongside the remote participant to verify identity and certify the conduct of the hearing.
- The deployment of videoconferencing requires appropriate training programmes for judges, prosecutors, lawyers, and other practitioners. These programmes should focus not only on the technical operation of the tools but also on identifying the risks that their use may pose to fundamental rights.

The guiding principle is clear: technology must serve justice, not the reverse. The digitalisation of criminal justice will only be legitimate if embedded in a normative framework that preserves, and ideally strengthens, the procedural safeguards of the criminal process.

VII. Conclusions: From Soft Law to Binding Safeguards

The CCBE's contribution to the High-Level Forum on the Future of EU Criminal Justice provides a coherent and structured vision of a criminal justice system within the Union, in which mutual recognition is genuinely built on trust. However, this trust cannot be presumed; it must be underpinned by robust, enforceable, and effective procedural safeguards.

At the core of this vision is the proposal for a new roadmap on procedural safeguards under Art. 82 TFEU. Rather than relying exclusively on soft-law instruments and on the mere execution of existing measures, the CCBE is calling for progress towards binding minimum standards in areas such as pre-trial detention and detention conditions, exclusionary rules for unlawfully obtained evidence, professional secrecy and legal professional privilege/attorney–client privilege, defence investigations, and the presence of counsel during searches and seizures.

In parallel, the proposal emphasises that significant adjustments are required to the flagship instruments of mutual recognition — the European Arrest Warrant, the European Investigation Order and the framework governing conflicts of jurisdiction— in order to fully accommodate the requirements of the Charter and the case law of the European courts. A more fundamental rights-compliant European Arrest Warrant, a European Investigation Order that ensures equality of arms, and a regulation on conflicts of jurisdiction would consolidate mutual trust.

At the institutional level, strengthening the role of Eurojust, Europol, and the European Public Prosecutor's Office must necessarily be accompanied by reinforced guarantees of transparency, defence rights, and accountability. Criminal cooperation cannot be based on *a priori* presumptions of respect for fundamental rights and institutionally embedded procedural safeguards; rather, it must be based on clear and reviewable procedures.

Finally, the digitalisation of criminal justice, — particularly through the use of artificial intelligence and videoconferencing — requires a proportionate regulatory response that combines openness to innovation with a firm commitment to fundamental rights. The European Union therefore finds itself at a crossroads: it can either pursue the purely instrumental modernisation of criminal justice centred on efficiency, or it can seize the opportunity to reaffirm the rule of law and the centrality of procedural safeguards at the very heart of the integration project.

The CCBE's proposal clearly aligns with the latter approach. Viewed from the perspective of the legal profession and scholarship on criminal procedure, the CCBE's contribution, drawn up by its Criminal Law Committee, offers a realistic, yet ambitious blueprint for a future EU criminal procedural law worth its name: a body of law that balances effectiveness and justice, enables the effective prosecution of serious crimes without compromising human dignity, and transforms mutual trust into more than a rhetorical formula.

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1. In its French acronym: Le Conseil des Barreaux Européens.↩
2. Including Professors Valsamis Mitsilegas (University of Liverpool), Katalin Ligeti (University of Luxembourg), Lorena Bachmaier Winter (Complutense University of Madrid), and André Klip (Maastricht University).↩
3. Cf: Council of Bars and Law Societes of Europe, *CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice*, 8 October 2025, available at: <https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/CRIMINAL_LAW/CRM_Position_papers/EN_CRM_20251008_CCBE-contribution-to-the-High-Level-Forum-on-the-Future-of-EU-Criminal-Justice.pdf> accessed 18 May 2026.↩
4. Cf. T. Wahl, "Report of the High-Level Forum on the Future of EU Criminal Justice", <https://eucrim.eu/news/report-of-the-high-level-forum-on-the-future-of-eu-criminal-justice/>, accessed 18 May 2026.↩
5. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), p. 3.↩
6. Ibid., p. 3.↩
7. Ibid., p. 3.↩
8. Ibid., p. 7.↩
9. Ibid., pp. 8-9.↩
10. Ibid., p. 10.↩
11. Ibid., p. 13.↩
12. Ibid., p. 13.↩
13. Ibid., p. 13.↩
14. Ibid., pp. 11-12, expressly following S. Guerrero Palomares, "La reforma de los instrumentos de reconocimiento mutuo a la luz de la jurisprudencia del TJUE", in: A. Hernández López and E. Laro González (eds.), *Proceso Penal Europeo: ultimas tendencias, analisis y perspectivas*, 2024, pp. 304-306.↩
15. See well-known judgments such as 5 April 2016, Aranyosi and Caldararu, C-404/15 and C-659/15, and the more recent judgment of 31 January 2023, Puig Gordi and Others, C-158/21.↩
16. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, 8 October 2025, pp. 14-17.↩
17. This expression seeks to reflect the ability of investigative authorities in cross-border cases to choose the most favourable jurisdiction - in this context, the one offering weaker protection of the rights and safeguards of the suspect or accused.↩
18. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3) , pp. 15-16.↩
19. Art. 10 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, OJ L 294, 6.11.2013, 1.↩
20. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit. (*n. 3), p. 17.↩
21. Ibid., p. 15.↩

22. Ibid., pp. 17-18.↩
23. Ibid., p. 18. Reference is made to the Council Final Report of 10 December 2024 on the tenth round of mutual evaluations on the application of the European Investigation Order (EIO).↩
24. Ibid., p. 22.↩
25. Ibid., pp. 24-25.↩
26. Ibid., p. 25.↩
27. Ibid., p. 25.↩
28. Ibid., pp. 25-26.↩
29. Ibid., p. 26.↩
30. Ibid., pp. 27-28.↩
31. Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, OJ L 86, 24.3.2023, 44..↩
32. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), pp. 23-24.↩
33. Ibid., p. 27. For the cases, see also M. Lassalle and S. Lannier, "EncroChat – A Judicial Chronology", 4/2025 *eucrim*; T. Wahl, "What Remains of the ordre public in Transnational Surveillance?", 4/2025 *eucrim*.↩
34. Ibid., p. 28.↩
35. Ibid., p. 29.↩
36. An explanation of the European Law Institute proposal can be found in: L. Bachmaier Winter, "The Quest for Evidentiary Rules in EU Cross-Border Criminal Proceedings: Electronic Evidence, Efficiency and Fair Trial Rights", in: L. Bachmaier Winter and F. Salimi (eds.), *Admissibility of Evidence in EU Cross-Border Criminal Proceedings*, 2024, pp. 1 ff. 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.↩
37. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), pp. 29-30.↩
38. L. Bachmaier Winter and S. C. Thaman, "A Comparative View of the Right to Counsel and the Protection of Attorney-Client Privilege Communications", in: L. Bachmaier Winter, S. C. Thaman, and V. Lynn (eds.), *The Right to Counsel and the Protection of Attorney-Client Privilege in Criminal Proceedings: A Comparative View*, 2020, p. 7, pp. 37-69.↩
39. Cf.: ECJ, 18 May 1982, *AM&S v Commission*.↩
40. ECtHR, 25 March 1992, *Campbell v. the United Kingdom*, Appl. no. 13590/88; ECtHR, 6 December 2012, *Michaud v France*, Appl. no. 12323/11; ECtHR, 3 February 2015, *Apostu v Rumania*, Appl. no. 22765/12.↩
41. ECtHR, 3 April 2025, *Kulák v Slovakia*, Appl. no. 57748/21.↩
42. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), p. 31.↩
43. Ibid., p. 32.↩
44. Ibid., pp. 32-33. These principles was exposed by Prof. Holger Matt in a seminar held in Marbella (Málaga), October 2024 in an ERA seminar.↩
45. Ibid., p. 34.↩
46. Ibid., pp. 34-35.↩
47. Ibid., p. 35.↩
48. Ibid., p. 36.↩
49. The CCBE contribution relies on the report by E. Sellier and A. Weyembergh, *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*, 2018, commissioned by the European Parliament (LIBE Committee), available at: <https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604977/IPOL_STU(2018)604977_EN.pdf> accessed 18 May 2026.↩
50. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), p. 38.↩
51. Ibid., p. 38.↩
52. Ibid., p. 38.↩
53. OJ L 127, 29.4.2014, 39.↩
54. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), p. 39.↩
55. Ibid., pp. 39-40.↩
56. Ibid., p. 40.↩
57. Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, OJ L 328, 15.12.2009, 42.↩
58. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), p. 40.↩
59. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, 1.↩
60. CCBE contribution to the High-Level Forum on the Future of EU Criminal Justice, *op. cit.* (n. 3), pp. 40-41.↩
61. Ibid., p. 42.↩
62. Ibid., p. 42.↩
63. Ibid., pp. 43-44.↩
64. Ibid., p. 44.↩
65. Ibid., p. 48.↩
66. Ibid., p. 49.↩
67. Ibid., p. 49.↩
68. Ibid., pp. 49-50.↩

69. Ibid., p. 50.↩
70. Ibid., pp. 51-52.↩

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