Reinforcing EU Core Values in Criminal Justice

Insights from the High Level Forum on the Future of EU Criminal Justice

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Article

ABSTRACT

This article reflects on the future direction of EU criminal policy in light of the discussions held at the High-Level Forum on the Future of EU Criminal Justice (HLF). It proceeds from the premise that EU criminal law forms an integral part of the broader EU acquis and is grounded in a set of shared foundational values. The author therefore argues that future EU criminal policy should place the protection and promotion of the values enshrined in Article 2 of the Treaty on European Union – including the rule of law, fundamental rights, and democracy – at the centre of its development. Drawing on selected examples from both substantive and procedural criminal law, the author identifies areas in which a renewed emphasis on these values is particularly important for shaping future EU legislation. In conclusion, the article assesses the prospects for this approach in light of the outcomes of the HLF and considers its implications for the future development of EU criminal law.

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I. Introduction

In 2025, the European Commission launched a High-Level Forum for the Future of European Criminal Law[1] (HLF), which brought together representatives of EU Member States, EU criminal justice agencies and bodies, professional organisations from various branches of criminal law practice, and academia. The aim of the HLF was to revive the tradition of comprehensive EU criminal policy programmes — such as the Tampere Programme,[2] the Hague Programme,[3] and the Stockholm Programme[4] — through which both Member States and EU institutions would jointly articulate a vision for the development of the Area of Freedom, Security and Justice (AFSJ) over the following five-year period.

Following the entry into force of the Lisbon Treaty, Art. 68 of the Treaty on the Functioning of the European Union (TFEU) entrusted the European Council with the task of defining strategic guidelines for legislative and operational planning within the AFSJ. As a consequence, the above-mentioned ambitious, multiannual programmes that had previously structured the development of EU criminal policy were replaced by more general strategic guidelines adopted by the European Council. This evolution can be explained, at least in part, by the institutional changes brought about by the Lisbon Treaty. In particular, the Treaty substantially strengthened the role of the European Commission in the field of criminal justice by extending the application of the ordinary legislative procedure and by consolidating the Commission's right of legislative initiative regarding the approximation of substantive and procedural criminal law under Arts. 82 and 83 TFEU.

Since 2009, the Union has actively exercised these enhanced competencies, adopting a wide range of legislative initiatives across the criminal law domains envisaged by the Lisbon Treaty.[5] Against this background, the Commission considered the time ripe to take stock of the developments that had occurred since the Treaty's entry into force and to reflect on the future direction of EU criminal policy. The HLF was conceived as a forum for such reflection, bringing together European criminal law experts to discuss both the achievements of the past decade and the challenges likely to shape the next phase of European criminal justice integration. The discussion was structured around thematic blocs like substantive criminal law, procedural criminal law and judicial cooperation, procedural safeguards in criminal proceedings, the digitalisation of criminal justice, and EU JHA agencies and bodies.

This article contributes to this analysis, building on the author's statement at the opening of the HLF. It is based on the premise that the AFSJ forms an integral part of the broader EU *acquis*, which is rooted in shared core values.[6] Therefore, future EU criminal policy should prioritise safeguarding and promoting the core values enshrined in Art. 2 of the Treaty on European Union (TEU), including the rule of law, fundamental rights, and democracy. To this end, the article first provides a concise historical overview of the role and significance of these core values in shaping EU criminal law to date. It then refers to key examples of substantive and procedural criminal law where renewed emphasis on these values is particularly necessary to shape future EU legislation. The article concludes by assessing the prospects for a value-driven approach to the future development of EU criminal law, based on the outcomes of the HLF.

II. Core Values of Criminal Justice as a Starting Point for Developing a Five-Year Vision

Today, EU criminal law is an established part of the EU *acquis*. Its emergence, however, was by no means self-evident. In fact, its development is closely linked to the enforcement of EU policies. As early as the 1960s, the Commission recognised that the autonomy granted to Member States under the EC Treaty to sanction violations of EU law created a significant enforcement gap. Against this background, criminal law

gradually assumed a functional role, primarily aimed at supporting the effective enforcement of EU policies. According to this functionalist rationale, the integration of different policy areas through EU law genuinely leads to integration in criminal law (so-called "spill-over" effect), because criminal law is necessary to address compliance deficits among Member States in implementing Community policies.

The Court of Justice of the European Union (ECJ) played a central role in facilitating and consolidating this development. Although criminal law formally belonged to national competence, the ECJ's jurisprudence imposed substantive constraints on how that competence could be exercised when enforcing Community law.[7] This dynamic gave rise to a process of indirect harmonisation of national criminal law, particularly with regard to the definition of offences and enforcement practices. Thus, Community law not only limited Member State autonomy negatively, (by precluding the application of incompatible national rules), but also positively, by requiring national systems — including prosecutorial practices and procedural rules — to meet certain standards when applied in a Community law context.

A good example of the functionalist logic underlying European criminal justice integration is the development of measures to combat cross-border crime following the abolition of internal border controls on 31 December 1992.[8] According to the functional rationale, criminal law instruments are viewed and employed as tools for addressing specific cross-border criminal threats that have emerged or intensified as a consequence of integration in other policy areas. The creation of the internal market removed physical and technical barriers to the free movement of persons, goods, services, and capital.[9] Although this development generated significant economic and social benefits, it also facilitated the expansion of cross-border criminal activities. Member States soon realised that their traditional, largely autonomous criminal justice systems were ill-equipped to address forms of criminality that extended beyond national borders in terms of commission, effects, or proceeds, e.g., drug trafficking, money laundering, human trafficking, and cybercrime. Member States therefore established mechanisms of judicial cooperation and mutual recognition of judicial decisions, while also introducing instruments to approximate substantive criminal law, including the definition of criminal offences and the setting of minimum sanctions.[10]

Historically, EU criminal law was not conceived as a deliberate constitutional project aimed at creating a comprehensive "European criminal justice system." Rather, it emerged in response to the unintended consequences of the success of the European integration process itself. Thus, the development of EU criminal law reveals a fundamental paradox: measures originally designed to facilitate the Union's primary objective of economic integration have triggered a chain of secondary effects, generating new forms of vulnerability and cross-border risks that have subsequently required further regulatory and institutional integration.[11]

Although many areas of EU integration have been identified as potentially requiring criminal law enforcement, the weakness of the functional rationale is that Member States have often been unable to reach agreement on the approximation of their national criminal laws. Indeed, several policy fields have undergone substantial approximation at the EU level without being accompanied by corresponding criminal law measures. The banking sector is a prime example. In its 2011 Communication "Towards an EU Criminal Policy", the European Commission explicitly identified banking and financial services as areas in which the role of criminal law as an enforcement tool merited further consideration.[12] The EU has made significant progress towards approximating banking regulation and creating an integrated financial framework.[13] Yet, serious violations of banking rules have only been partially addressed through EU criminal law instruments. The rationale for criminalisation appears compelling. Given the high degree of interconnectedness of European financial markets, inadequate enforcement of EU banking rules in one Member State may have significant consequences for the stability and functioning of the financial system in others. Criminal sanctions could serve as an effective deterrent against serious misconduct, thus protecting consumers and investors, preserving confidence in financial institutions, and safeguarding the integrity and stability of the banking sector. Poten-

tial offences that could justify harmonised criminalisation at the EU level include fraudulent misuse of funds, fraudulent investment schemes, fraudulent bankruptcy, and serious violations of due diligence and compliance obligations. Nevertheless, despite the functional arguments in favour of criminal law intervention, Member States have thus far shown limited willingness to extend EU criminal law into this field. The banking example shows that functionalist pressures do not automatically lead to approximation of criminal laws and that political considerations, concerns about national sovereignty, and divergent legal traditions continue to influence EU criminal justice integration.

Alongside the functionalist rationale, a second dimension has gradually emerged that links the development of EU criminal law more directly to the broader project of European integration itself. This constitutional dimension is often expressed in aspirational rather than purely regulatory terms.[14] It is grounded in the idea that the European Union constitutes a community of values, founded upon and committed to promoting the principles set out in Arts. 2 and 3(1) TEU. From this perspective, criminal law is not merely an instrument for addressing practical enforcement needs but also serves an important normative function. The values underlying criminal justice are complex and at times potentially conflicting.[15] The protection of legal interests through deterrence, punishment, and prevention must be pursued within a framework of fair procedures, legal certainty, and respect for individual rights. Criminal law therefore embodies both the coercive power of the state and the safeguards necessary to ensure its legitimate exercise.

In the context of the European Union, criminal law can thus be understood as a means of protecting not only specific policy objectives but also of safeguarding and actively promoting the fundamental values upon which the Union is founded. Accordingly, the development of EU criminal law should be guided by, and contribute to, the realisation of the values enshrined in Arts. 2 and 3(1) TEU. Among the values explicitly listed in Art. 2 TEU, four are particularly relevant to criminal justice: respect for human dignity, freedom, the rule of law, and respect for fundamental rights.

The emergence of this constitutional dimension was gradual. It was only with the Hague Programme that elements extending beyond a purely functional rationale began to appear in the EU's approach to criminal justice. Under its general orientations for the AFSJ, the Hague Programme acknowledged the Union's "legal obligation to ensure that in all its areas of activity, fundamental rights are not only respected but also actively promoted."[16]

A further step in this constitutional development was taken in November 2009 with the adoption of the Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings.[17] The Roadmap, which became the foundation for the subsequent adoption of six EU Directives on procedural rights, recognised that EU action in defining minimum procedural rights was necessary to enhance mutual trust among the judicial authorities of the Member States. More importantly, however, it explicitly acknowledged that, "after a lot of progress [had] been made in the area of judicial and police cooperation on measures that facilitate prosecution," the time had come to restore the balance between enforcement objectives and the protection of individual procedural rights. This represented a significant normative development, placing the rights of suspects and accused persons at the centre of the European criminal justice project.

The constitutional dimension of EU criminal law was further elaborated in the aforementioned 2011 Commission Communication "Towards an EU Criminal Policy"[18] and in the 2012 European Parliament resolution "An EU approach to criminal law."[19] Both institutions stressed that the development of EU criminal law must be guided by the fundamental values on which the Union is founded. They highlighted the importance of safeguarding essential principles of criminal justice, including human rights protection, legality, culpability, proportionality, the presumption of innocence, *ultima ratio*, and *ne bis in idem*. Criminal law was thus increasingly presented not merely as an instrument of policy enforcement but also as a field governed by funda-

mental constitutional principles that reflect the Union's commitment to the rule of law and the protection of individual rights.

Adopting a values-based approach to lawmaking also offers the prospect of a more coherent and principled strategy for EU criminal law legislation. Recognising this need, the European Parliament argued in its 2012 resolution:[20]

> (…) criminal law must constitute a coherent legislative system governed by a set of fundamental principles and standards of good governance in full respect of the EU Charter of Fundamental Rights, the European Convention on Human Rights and other international human rights conventions to which the Member States are signatories.

From this perspective, the constitutional dimension not only serves as a source of legitimacy for EU criminal law but also as a normative framework capable of guiding its future development in a consistent, rights-based manner.

Still, the practical implementation of this values-based approach has remained limited.[21] Although the constitutional discourse surrounding EU criminal law has become increasingly prominent, translating this normative orientation into concrete legislative and policy outcomes remains a significant challenge.[22]

III. Focus Areas for Substantive and Procedural Criminal Law

In this section, I will highlight three areas which, in my view, clearly demonstrate the need to guide the future development of EU criminal law through a value-driven rationale: (1) hate crime, (2) foreign interference with democratic processes, and (3) defence rights in the digital age. These examples are intended to be illustrative rather than exhaustive,[23] as they provide particularly compelling illustrations of the potential of a values-based approach to legislative design. Each concerns interests that are closely connected to the Union's constitutional foundations and raises questions that cannot be understood solely through the traditional logic of market integration or cross-border enforcement. Together, they demonstrate how EU criminal law can increasingly contribute to protecting the Union's core values and democratic order.

1. Hate crime and hate speech

The current EU *acquis* on hate crime remains fragmented and is characterised by a number of significant shortcomings. The central legislative instrument in this field, Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law,[24] identifies bias motivation as the defining element of hate speech and hate crime committed on racist and xenophobic grounds. However, its scope is limited. It does not extend criminal law protection to hate speech and hate crime motivated by other protected characteristics, such as sex, gender, gender identity, sexual orientation, age, disability, language, or political opinion and belief, although several Member States have chosen to include some of these grounds within their national criminal legislation. Furthermore, despite the Framework Decision being formally implemented across all EU Member States, recent analyses by the European Parliament reveal considerable disparities in national legislation, definitions, and levels of protection, resulting in an uneven landscape of hate crime regulation throughout the Union.[25]

More recently, the Directive on combating violence against women and domestic violence, adopted on 14 May 2024, has expanded EU criminal law intervention into a related area by criminalising conduct such as female genital mutilation, forced marriage, cyberharassment, cyberstalking, and certain forms of cyber incite-

ment to hatred or violence.[26] The Directive requires Member States to criminalise the intentional incitement of violence or hatred directed against a group of persons, or a member of such a group, defined by reference to gender, where material containing such incitement is publicly disseminated by means of information and communication technologies.. The scope of the offence remains relatively narrow, however, as criminalisation may be limited to instances involving a threat to public order or conduct that is threatening, abusive, or seriously insulting.

Additional protection is provided through the Victims' Rights Directive,[27] which seeks to address the specific vulnerabilities of victims of bias-motivated offences. Pursuant to Art. 22, Member States are required to conduct an individual assessment of victims in order to determine their need for special protection measures. When performing this assessment, the competent authorities must consider the victim's personal characteristics, the nature of the offence, and the circumstances in which it was committed. The Directive expressly recognises hate crime, gender-based violence, and other offences motivated by prejudice or discrimination as categories deserving particular attention and enhanced protection for victims. While these provisions constitute an important recognition of the specific harms associated with bias-motivated offences, they primarily focus on victim protection rather than on the harmonisation of substantive criminal law.

The fight against hate speech in the online environment is further addressed through the Digital Services Act (DSA).[28] In line with the values of human dignity and respect for fundamental rights enshrined in the EU Charter of Fundamental Rights, the DSA seeks to ensure a safe, predictable, and trustworthy digital environment. The Regulation requires online platforms to establish mechanisms for the detection, reporting, and moderation of illegal content. In particular, providers of very large online platforms and very large online search engines must implement reasonable, proportionate, and effective measures to mitigate the dissemination of illegal content, including online hate speech and forms of cyber violence. The DSA does not itself define hate speech or hate crime, however, relying instead on underlying Union law and national law to determine what constitutes illegal content. As a result, divergent national definitions continue to shape the boundaries of online hate speech regulation across the Union.

From a values-based perspective, this fragmented framework appears increasingly difficult to reconcile with the Union's commitment to human dignity, equality, non-discrimination, and the protection of fundamental rights under Arts. 2 and 3 TEU. The existing *acquis* provides protection against some forms of bias-motivated offending while leaving significant gaps with regard to others. Therefore, a more coherent and comprehensive EU approach to hate crime could be justified by the need to safeguard and give concrete effect to the Union's foundational values. Such an approach would recognise that attacks motivated by prejudice are not only offences against individual victims but also against the pluralism, equality, and mutual respect that constitute the normative foundations of the European project itself.

In this context, the Commission proposed in December 2021 that hate speech and hate crime be added to the list of particularly serious crimes with a cross-border dimension under Art. 83(1) TFEU.[29] A decision to this effect would constitute a necessary first step towards the adoption of minimum rules concerning the definition of offences and sanctions in this area, thereby enabling the development of a more coherent and comprehensive EU framework on hate crime. However, the Council has thus far failed to reach the unanimity required under Art. 83(1) TFEU to adopt the proposed decision. The lack of political consensus among the Member States has consequently stalled the formal expansion of EU criminal law competence in this area, despite growing concerns about the prevalence of hate speech and hate-motivated violence across the Union.

In response to this impasse, in December 2023, the Commission and the High Representative adopted a Joint Communication to the European Parliament and the Council entitled "No place for hate: a Europe united against hatred", setting out a broader strategy to combat hatred in Europe.[30] The Communication an-

nounced a series of initiatives spanning several policy fields, including prevention, victim support, online content moderation, awareness-raising, and improved data collection. At the same time, the Commission reiterated its call for the Council to adopt the proposed decision extending the list of EU crimes to include hate speech and hate crime, arguing that the existing legal framework remains inadequate to address evolving forms of hatred, particularly in the online environment.[31] In January 2024, the European Parliament added its support to this initiative, adopting a resolution urging the Council to include hate speech and hate crime among the areas of crime listed in Art. 83(1) TFEU, so that the Commission, in the second stage of the process, can propose minimum rules concerning the definition of criminal offences and sanctions in this area.[32]

In its Communication accompanying the proposal to add hate speech and hate crime to the areas of crime laid down in Art. 83(1) TFEU, the Commission seems to struggle to present hate speech and hate crime as serious internal security threats that are comparable to the offences currently listed in Art. 83(1) TFEU, such as terrorism, trafficking in human beings, or money laundering. Rather than focusing primarily on security concerns, the Commission emphasises the broader societal harm caused by these offences, highlighting their detrimental impact on both individuals and society as a whole and their ability to undermine the very foundations of the European Union.[33] In particular, the Communication places considerable emphasis on the threat that hate speech and hate crime pose to the Union's common values. It stresses that such conduct is fundamentally incompatible with the principles enshrined in Arts. 2 and 6 TEU and in the EU Charter of Fundamental Rights.[34] According to the Commission, hate speech and hate crime attack the values of human dignity, equality, respect for fundamental rights, and non-discrimination that constitute the normative basis of the European integration project. Therefore, the principal justification for EU action lies not only in the cross-border nature of these offences but also in their corrosive effect on the Union's constitutional order and value system.

The Commission's proposal can thus be regarded as one of the clearest and most ambitious attempts to advance the protection of EU common values through criminal law. Unlike earlier initiatives, which were predominantly justified by reference to the effective functioning of the internal market or the need to combat transnational criminality, this proposal places the safeguarding of the Union's foundational values at the centre of the argument for criminal law harmonisation. It thereby represents a significant shift towards a genuinely constitutional rationale for EU criminal law.

At the same time, however, the proposal also illustrates the political limits of a values-based approach. Under Art. 83(1) TFEU, adding new crimes to the list of "Euro-crimes" requires unanimous approval in the Council. Given the divergent views among Member States regarding the scope of hate speech regulation, freedom of expression, and the role of criminal law in protecting societal values, achieving such unanimity is likely to prove difficult.

2. Foreign information manipulation and interference

Another area that merits urgent attention from a values-based perspective is the criminalisation of foreign interference in democratic processes. Safeguarding democracy is a core objective of the European Union, intrinsically linked to the values of democracy, the rule of law, and respect for fundamental rights, as set out in Art. 2 TEU. In recent years, concerns about foreign information manipulation and interference (FIMI) have moved to the forefront of the European policy agenda. The term FIMI is now widely used to describe coordinated efforts by foreign state and non-state actors to manipulate information, distort public debate, and influence democratic decision-making processes. The Council of Europe, the European Union, and other international organisations are currently examining the extent to which criminal law should play a role in addressing this phenomenon.[35]

While the precise scope and content of potential criminal offences require careful consideration, there can be little doubt that foreign interference has become a tangible threat to democratic governance. Numerous allegations and documented instances of information manipulation campaigns have raised concerns about their impact on national and European electoral processes. Recent experiences in several European countries, including Hungary[36] and Romania,[37] as well as concerns surrounding elections to the European Parliament, have demonstrated the vulnerability of democratic institutions to external influence and coordinated disinformation campaigns. A few European states, including Norway, Lithuania, Latvia, and Estonia, have already introduced criminal provisions specifically targeting certain forms of foreign interference, providing examples of emerging national responses to this challenge.[38]

From an EU law perspective, a key preliminary question is whether the EU has the competence to legislate in this field and, if so, what the scope of this competence is. One possible starting point would be the criminalisation of interference with EU electoral processes.[39] The rationale here would be similar to that which underpins the criminal law protection of the Union's financial interests.[40] Just as criminal law was deemed necessary to safeguard the integrity of the Union's budget, criminal law measures may be justified to protect another distinct EU legal interest: the integrity and legitimacy of European democratic processes and elections.[41]

Accordingly, Art. 83(2) TFEU could serve as a suitable legal basis for legislative action. This provision allows criminal laws to be harmonised if this is essential to ensure the effective implementation of a Union policy in an area that has already been subject to harmonisation measures. Given the importance of democratic participation and electoral integrity to the functioning of the Union, one could argue that criminal law intervention is necessary to effectively protect European elections against foreign manipulation and interference.

To some extent, aspects of FIMI that are similar to hate crime may already fall within the existing reference to "computer crime" in Art. 83(1) TFEU, particularly where online platforms, artificial intelligence, or cyber-enabled methods are used. This could also be a starting point for the criminalisation of FIMI.

3. Specific procedural safeguards adapted to the digital setting

A third example in which a values-based approach would be most pertinent for the development of EU criminal law is that of procedural safeguards. In light of the growing integration of technology, the EU should consider digitalising procedural rights where feasible, namely the rights to interpretation, translation, access to the case file, legal assistance and legal aid, and the right to be present at trial.[42] In particular, it could explore the use of videoconferencing to connect the accused with their lawyer, an interpreter, or the court itself as well as the use of artificial intelligence (AI) to ensure access to the case file or the translation of legal documents. With this in mind, the EU has funded the DigiRights (Digitalisation of Defence Rights in Criminal Proceedings) project, which aims to map and assess current digital practices surrounding these rights. The ultimate goal of the project is to propose European guidelines for the digital application of the rights.[43]

Technological developments, particularly AI, offer opportunities to not only strengthen defence rights but also to improve the accuracy of fact-finding in criminal trials. Law enforcement authorities across Europe already extensively employ AI systems both to analyse existing evidence, such as large volumes of documents, communications, and datasets[44] and to generate evidence through methods such as AI-assisted DNA analysis and facial recognition technologies.[45] These developments have the potential to enhance investigative capabilities. At the same time, however, the growing use of AI in the detection, prevention, and investigation of crime risks to create a significant imbalance of power between law enforcement authorities and the defence. The Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence illustratively describes this as "information asymmetry":[46]

> Due to certain unique characteristics of artificial intelligence systems, such as their technical complexity, their data-driven character and the relative opaqueness of the operations of some such systems, human interactions with artificial intelligence systems have been affected by the problem of opaqueness of artificial intelligence systems and information asymmetry, i.e. a significant imbalance in the access to, understanding of, or control over information between different parties involved in the activities within the lifecycle of artificial intelligence systems.

Law enforcement authorities can use AI tools to rapidly sift through large amounts of data, whereas other participants in criminal proceedings, particularly defence lawyers, often lack the infrastructure, knowledge, and means to access AI tools to carry out searches, for instance, for exculpatory evidence or for the verification of the reliability and validity of evidence.[47]

From a values-based perspective grounded in the principles of the rule of law, effective judicial protection, and the right to a fair trial, the increasing digitalisation of criminal justice therefore requires a corresponding strengthening of defence rights. To address these emerging challenges, three complementary rights should be recognised, which – together – could help preserve procedural fairness and equality of arms in an increasingly digital criminal justice environment:

- A right to digital discovery, which extends beyond the traditional right of access to the case file in order to encompasses meaningful access to relevant digital datasets and AI-generated material;
- A right to search for exculpatory evidence, which enables the defence to make effective use of digital tools and technologies in identifying evidence favourable to the accused;
- A right to digital forensic expertise, which supplements the traditional right to legal assistance by ensuring access to independent technical expertise necessary to scrutinise, verify, and challenge AI-based evidence and investigative methods.

The lack of awareness among suspects and accused persons of the use of AI during the investigation or the prosecution hinders their ability to seek an effective remedy.[48] Even though access to information about automated processing is a cornerstone principle of Regulation 679/2016[49] – particularly when a decision is "solely based on automated processing"[50] – opacity is the norm in law enforcement contexts. According to Art. 26(11) of the EU AI Act, the restrictions on the right to information set out in Art. 13 of the Law Enforcement Directive (LED)[51] also apply to high-risk AI systems used for law enforcement purposes. While Art. 13(2)(d) LED establishes an obligation to notify the data subject *ex post*,[52] it neither specifies at what stage of the proceedings this *ex post* notification should occur, nor the extent to which information must be provided.

Art. 7 Directive 2012/13/EU on the right to information in criminal proceedings[53] requires Member States to guarantee the defence access to "all material evidence in the possession of the competent authorities" and to do so "in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court". However, since the Directive does not include specific guarantees tailored for digital disclosure, practices remain inconsistent across Member States. Even within individual Member States, no general rule applies: disclosure obligations vary, depending on the technology employed. To address the specificities of digital investigations, the EU should go beyond the minimum rules laid down in Art. 7 of Directive 2012/12/EU and introduce a right for the defence to access not only all the evidence but also all supplemental information necessary for their defence.[54] Some Member States have already done so in order to guarantee the equality of arms between law enforcement authorities and the defence.[55]

Finally, in order to be able to challenge the validity and reliability of AI-generated evidence, the defence needs the assistance of digital forensic experts. When paid for privately, however, this assistance can be very costly for the defendant. The existing European *acquis* on legal aid is rather limited in scope. Directive 2016/1919[56] lays down minimum common rules concerning the right to legal aid and sets a minimum standard on the quality of legal aid services. Regarding the burden of costs for legal assistance, Art. 4(1) requires Member States to ensure "that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require". In addition, according to Art. 7, Member States must establish an "effective legal aid system" of a "quality adequate to safeguard the fairness of the proceedings". Since lawyers are often ill-equipped to effectively assist defendants in examining digital forensic procedures, methods, and tools in AI-driven investigations, the material and temporal scope of assistance offered by the legal aid Directive must be expanded.

IV. Concluding Remarks

The evolution of EU criminal justice has always reflected the broader trajectory of European integration, with cooperation gradually and steadily intensifying due to shared values and common interests as well as the realisation that no EU Member State can effectively address contemporary criminal law challenges alone. As this contribution has demonstrated, the Union now faces a dual imperative.

On the one hand, it must address long-standing gaps in substantive and procedural criminal law, particularly in areas in which fragmentation undermines effective enforcement, such as banking-related offences. The recent adoption of the Regulation on European Production and Preservation Orders for electronic evidence[57] demonstrates that the functionalist rationale it is still very much present, ensuring progress and covering new ground for the future development of EU criminal law.

On the other hand, the EU must also use criminal law to promote its core values. The rule of law, fundamental rights, equality, and judicial independence are not abstract principles; they are the conditions for the legitimacy of and trust in EU criminal law without which it cannot function. Ensuring that future initiatives in this field are firmly anchored in a values-based approach is therefore not only normatively desirable but also practically indispensable. Mutual recognition, effective judicial cooperation, and public confidence in the Union's criminal justice project all depend on this approach.

Discussions at the HLF suggest, however, that the prospects for a stronger constitutional dimension as a guiding force in the future development of EU criminal law remain relatively limited. This is partly due to the growing divergence among Member States regarding the interpretation and practical application of shared European values. Recent years have seen serious rule-of-law concerns in several Member States, including challenges to judicial independence, political interference in the administration of justice, and broader structural deficiencies affecting the functioning of national judicial systems. In this context, the Court of Justice of the European Union has assumed an increasingly important role in safeguarding and promoting the Union's foundational values and ensuring compliance with the requirements of Art. 2 TEU. [58]

Another, and perhaps more immediate, obstacle to the development of a values-based approach is the growing fatigue among Member States regarding the implementation of new legislative measures. Since the entry into force of the Lisbon Treaty on 1 December 2009, the Union has adopted a substantial body of criminal justice legislation, covering both substantive criminal law and procedural safeguards. During the HLF discussions, a large majority of Member States indicated that the resources currently available within their ministries of justice are already fully absorbed by the task of implementing and applying the existing *acquis*. Consequently, many delegations expressed reservations about the adoption of new legislative instruments, in-

stead emphasising the need to consolidate, streamline, and improve the coherence of the existing body of EU criminal law.

In the coming years, the challenge will therefore be to reconcile these two objectives: ensuring the effective implementation and coherence of the existing *acquis*, while also enabling EU criminal law to respond to emerging threats to the Union's constitutional values, including democracy, the rule of law, and fundamental rights. Discussions at the HLF suggest that future progress is likely to depend less on ambitious new legislative programmes and more on the strategic use of existing competencies, consistent application of the current *acquis*, and gradual development of criminal law measures capable of protecting the Union's foundational values where necessary.

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1. For the agenda of the High-Level Forum on the Future of EU Criminal Justice, see: European Commission, "High-Level Forum on the Future of EU Criminal Justice", *European Commission*, <https://commission.europa.eu/high-level-fora-justice-growth-and-future-eu-criminal-justice_en>. All hyperlinks in this article were last accessed on 10 September 2026.↩
2. Council of the European Union, "Presidency Conclusions, Tampere European Council, 15-16 October 1999", 16 October 1999.↩
3. Council of the European Union, "The Hague Programme: Strengthening Freedom, Security and Justice in the European Union", OJ C 53, 3.3.2005, 1.↩
4. Council of the European Union, "The Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens", OJ C 115, 4.5.2010, 1.↩
5. For an overview of the post-Lisbon EU criminal law *acquis*, see Council of the European Union, *European Union Instruments in the Field of Criminal Law and Related Texts*, December 2019; Council of the European Union, "Council Conclusions on the Future of EU Criminal Law: Recommendations on the Way Forward", Doc. 10984/24, 24 June 2024, para. 1(b); P. Csonka and O. Landwehr, "10 Years after Lisbon – How 'Lisbonised' is the Substantive Criminal Law in the EU?", (2019) *eucrim* 261.↩
6. E. Herlin-Karnell, "All Roads Lead to Rome: The New AFSJ Package and the Trajectory to Europe 2020", (2014) *eucrim*, 28.↩
7. In the landmark Greek Maize case, the Court of Justice held that, although the choice of sanctions remained a matter for the Member States, national authorities were nevertheless obliged to ensure that infringements of EU law were punished under conditions analogous to those applicable to comparable breaches of national law and that the penalties imposed were effective, proportionate, and dissuasive (Case 68/88, *Commission v Greece*, ECLI:EU:C:1989:339). See further R. Sicurella, "EU Competence in Criminal Matters", in: V. Mitsilegas, M. Bergström and T. Quintel (eds.), *Research Handbook on EU Criminal Law*, 2nd ed., 2024, p. 63; K. Zoumpoulakis, "Approximation of Criminal Sanctions in the European Union: A Wild Goose Chase?", (2022) 13(3) *New Journal of European Criminal Law (NJECL),* 341, 341-343.↩
8. V. Mitsilegas, *EU Criminal Law*, 2nd ed., 2022, pp. 612 ff.↩
9. V. Mitsilegas, *EU Criminal Law*, 2nd ed., 2022, pp. 2-4.↩
10. For an overview of the measures adopted by the EU, see V. Peers, *EU Justice and Home Affairs Law*, Vol. II: *EU Criminal Law, Policing, and Civil Law*, 5th ed., 2023.↩
11. J. Monar, "Reflections on the Place of Criminal Law in the European Construction", (2021) 27(4-6) *European Law Journal,* 356.↩
12. Communication from the Commission, "Towards an EU Criminal Policy: Ensuring the Effective Implementation of EU Policies through Criminal Law", COM(2011) 573 final, p. 3.↩
13. European Commission, "What Is the Banking Union?", *European Commission*, <https://finance.ec.europa.eu/banking/banking-union/what-banking-union_en>.↩
14. J. Monar, (2021) 27(4-6) *European Law Journal, op. cit.* (n. 11), 356.↩
15. L. Mancano, "A Theory of Justice? Securing the Normative Foundations of EU Criminal Law through an Integrated Approach to Independence", (2021) 27(4-6) *European Law Journal,* 477.↩
16. Council of the European Union, "The Hague Programme", *op. cit.* (n. 3) p. 2.↩
17. Council Resolution 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.↩
18. COM(2011) 573 final, *op. cit.* (n. 12).↩
19. European Parliament, "Resolution of 22 May 2012 on an EU Approach to Criminal Law", OJ C 264 E, 13.9.2013.↩
20. European Parliament, *op. cit.* (n. 19), Recital H.↩
21. Indeed, beyond the adoption of the procedural rights directives aimed at strengthening defence rights in criminal proceedings, relatively few EU criminal law instruments have been primarily justified by the protection of fundamental values. While Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L, 2024/1385, 24.5.2024, represents an important development, it harmonises only a limited number of offences and, following significant political compromise during the legislative process, does not extend to key forms of gender-based violence such as rape. See M. Dell'Aquila, "Omitting Rape from the EU's Directive on Combating Violence against Women Is a Huge Mistake", *CEPS*, 28 March 2024, <https://www.ceps.eu/omitting-rape-from-the-eus-directive-on-combating-violence-against-women-is-a-huge-mistake/>.↩
22. See, for example, the ongoing negotiations on extending the list of EU crimes under Art. 83(1) TFEU to include hate speech and hate crime; European Parliamentary Research Service, "Hate Speech and Hate Crime: Time to Act?", PE 762.389, September 2024, pp. 9-10.↩
23. Other areas could equally be considered within such a framework. Indeed, at the HLF, a number of scholars, practitioners, and professional organisations advocated further EU initiatives aimed at strengthening common standards of criminal justice. Proposals included the adoption of minimum rules on detention conditions, the development of common standards governing the admissibility and exclusion of evidence, and greater approximation of investigative measures and procedural safeguards. While these initiatives differ in scope and objective, they share a common concern: the need to ensure that the AFSJ develops in a manner that reflects not only the functional demands of cooperation and mutual recognition but also the

Union's commitment to the rule of law, fundamental rights, and effective judicial protection. See, e.g., See V. Costa Ramos, Guest Editorial, (2025) *eucrim* 1; S. Guerrero Palomares, "Justice Systems Built on Confidence: The CCBE Proposal on the Future of EU Criminal Justice", in this issue; T. Wahl, "Report of the High-Level Forum on the Future of EU Criminal Justice", (2025) *eucrim*, 252-254.↩

24. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, 55.↩
25. European Parliamentary Research Service, "Criminalisation of Hate Speech and Hate Crime in Selected EU Countries", PE 766.226, November 2024; European Parliamentary Research Service, "Hate Speech and Hate Crime: Time to Act?", PE 762.389, September 2024.↩
26. Directive (EU) 2024/1385, *op. cit.* (n. 21).↩
27. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, 57.↩
28. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, 1.↩
29. Annex of Communication from the Commission, "A More Inclusive and Protective Europe: Extending the List of EU Crimes to Hate Speech and Hate Crime", COM(2021) 777 final.↩
30. JOIN(2023) 51 final.↩
31. JOIN(2023) 51 final. 6.↩
32. European Parliament resolution of 18 January 2024, "Extending the list of EU crimes to hate speech and hate crime", P9_TA(2024)0044, OJ C, C/2024/5733, 17.10.2024.↩
33. The Commission invokes their impact on common values, the harm caused to individual victims and their communities, and their broader societal impact to substantiate its claim that hate speech and hate crime meet the threshold of particular seriousness required for their inclusion as an area of crime under Art. 83(1) TFEU. As regards the latter, the Commission emphasises that hate speech and hate crime "are a threat to democratic values, social stability and peace", as they "heighten social divisions, erode social cohesion, and trigger retaliation, resulting in violence and counter-violence." It further notes their "harmful impact on fundamental rights, in particular on human dignity, equality and freedom of expression." On this point, see Communication from the Commission, "A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime", COM(2021) 777 final, pp. 8–11.↩
34. COM(2021) 777 final, *op. cit.* (n 33), p. 8.↩
35. The urgency of addressing this issue is reflected in the recent Council of Europe publication, "Feasibility Study on the Possible Elaboration of a Legal Instrument on Foreign Information Manipulation and Interference (FIMI), Including Disinformation", CM/Inf(2026)18, 10 April 2026, which concludes that FIMI poses a direct threat to democracy, human rights, and the rule of law; the study recommends further work towards a Council of Europe legal instrument. See. J. Kanstinger, "Committee of Ministers Give Green Light to CoE Action on Information Manipulation and Foreign Interference", news section of this issue.↩
36. OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Hungary, Parliamentary Elections, 12 April 2026: Interim Report*, 27 March 2026.↩
37. Venice Commission, *Urgent Report on the Cancellation of Election Results by Constitutional Courts*, CDL-AD(2025)003 (2025); International Foundation for Electoral Systems (IFES), *The Romanian 2024 Election Annulment: Addressing Emerging Threats to Electoral Integrity* (2024).↩
38. See Council of Europe, CM/Inf(2026)18, , *op. cit.* (n. 35), Chapters 3, 5 and 6, discussing recent instances of foreign information manipulation and interference, their impact on democratic processes, and national legislative responses, including criminal law measures adopted in European states.↩
39. Significantly, the Council of Europe feasibility study (*op. cit.* (n. 35), p. 52) also identifies the protection of electoral integrity as a central objective of any future European legal instrument on FIMI.↩
40. This is done through Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, 29 – the PIF Directive.↩
41. V. Mitsilegas, "The Future of EU Criminal Justice: Towards a Values-Driven European Criminal Law", (2025) 16(2) *NJECL,* 123, 124.↩
42. A. Klip, "The Right to Be Present Online", (2024) 32(1) *European Journal of Crime, Criminal Law and Criminal Justice* (EJCCLCJ), 1-14; S; Allegrezza and L. Bernardini, "Digitalising Judicial Cooperation in Criminal Matters: Nailed It on the First Try?", *EU Law Live*, 5 October 2024.↩
43. A. Beazley, *DigiRights Comparative Report*, 11 December 2025. See also European Commission, "Digitalisation of Defence Rights in Criminal Proceedings (DigiRights)", <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/opportunities/projects-details/43252386/101056667/JUST2027>.↩
44. See ECJ, 30 April 2024, Case C-670/22, *M.N. (EncroChat)*, ECLI:EU:C:2024:372, concerning the large-scale cross-border collection and analysis of encrypted communications. In this regard, see also D.N. de Jonge and S.L.J. de Vries, "Data-Driven Investigations in a Cross-Border Setting", (2024) *eucrim,* 241.↩
45. See K. Ligeti, "Unpacking AI Evidence and (Re-)Defining Procedural Safeguards in Digital Investigations", in: K. Ligeti (ed.), *AI Evidence and Criminal Proceedings* (Oxford, Bloomsbury Publishing, 2026).↩
46. Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225), no. 96. The report is available at: <https://rm.coe.int/1680afae67>.↩
47. On these questions, see K. Ligeti, *op. cit.* (n. 45).↩
48. For a detailed analysis of new defence rights in the context of AI evidence, see K. Ligeti, *op. cit.* (n. 45).↩
49. Arts. 5, 12, 13, 14, and 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). OJ L 119, 4.5.2016, 1 [hereinafter: GDPR].↩
50. See Art. 22 and related access rights in Arts. 15(1)(h), 14(2)(g) and 13(2)(f) GDPR.↩
51. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, 89 [hereinafter: LED].↩

52. Art 13(2) LED: "In addition to the information referred to in paragraph 1, Member States shall provide by law for the controller to give to the data subject, in specific cases, the following further information to enable the exercise of his or her rights: (a) the legal basis for the processing; (b) the period for which the personal data will be stored, or, where that is not possible, the criteria used to determine that period; (c) where applicable, the categories of recipients of the personal data, including in third countries or international organisations; (d) where necessary, further information, in particular where the personal data are collected without the knowledge of the data subject."↩
53. 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.↩
54. The '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 suggests introducing a new provision into national criminal procedural law to provide that "[t]he defendant [should have] the right to access the full extent of the evidence, and to the report prepared by qualified IT experts, to challenge the chain of custody, the results of the analysis or its interpretation, and also to challenge the conclusions in the expert opinion." For the proposal, see <https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Proposal_for_a_Directive_on_Mutual_Admissibility_of_Evidence_and_Electronic_Evidence_in_Criminal_Proceedings_in_the_EU.pdf>. This proposal codifies the jurisprudence of the ECtHR in *Sigurður Einarsson and Others v Iceland*, Appl. no 39757/15 (judgement of 4 June 2019). See also the article by L. Bachmaier in this issue.↩
55. See, for instance, Bundesverfassungsgericht (BVerfG) [German Federal Constitutional Court], Order of 20 June 2023 – 2 BvR 1167/20, ECLI:DE:BVerfG:2023:rk20230620.2bvr116720, para 45; District Court of Amsterdam, 27 February 2024, ECLI:NL:RBAMS:2024:686-689, 691-704.↩
56. 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.↩
57. Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings, OJ L 191, 28.7.2023, 118.↩
58. Most notably in Poland and Hungary, judicial reforms were enacted that threatened fair trial guarantees under the EU legal framework. In Case C-619/18, *Commission v Poland*, ECLI:EU:C:2019:531, the ECJ held that Poland's judicial reforms violated EU law by undermining judicial independence. In Joined Cases C-585/18, C-624/18 and C-625/18, *A.K. and Others*, ECLI:EU:C:2019:982, the Court found that Poland's Disciplinary Chamber did not satisfy the requirements of independence and impartiality under Art. 47 of the Charter of Fundamental Rights of the European Union. In Case C-286/12, *Commission v Hungary*, ECLI:EU:C:2012:687, the Court held that Hungary's legislation requiring the compulsory retirement of judges violated EU law by undermining judicial independence.↩

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