Towards a New Roadmap for Defence Rights

The ECBA's Vision for the Future of EU Criminal Justice

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Article

ABSTRACT

Over more than two decades, the EU's area of criminal justice has been built instrument by instrument — a forest of interdependent legal tools. Yet the ecosystem is out of balance: enforcement powers and prosecutorial instruments have grown vigorously while the procedural safeguards designed to protect individuals remain underdeveloped, poorly harmonised, and increasingly strained by digital evidence, cross-border investigations, and the widening operational role of EU justice and home affairs agencies. This system must be improved, and the European Criminal Bar Association (ECBA) outlined its vision in its Agenda for European Criminal Justice, prepared for the 2025 High-Level Forum on the Future of EU Criminal Justice (HLF). This article summarises that intervention. Drawing on the Agenda, it presents both a short-term programme to improve existing instruments and a long-term vision envisaging for a coherent, rights-based European criminal justice framework grounded in genuine equality of arms. It pays particular attention to three intersecting themes that crystallised in the ECBA's discussions with practitioners: the Lisbonisation and coherence of the mutual recognition framework; the role of the European Public Prosecutor's Office (EPPO) and the need for harmonised procedural safeguards in cross-border proceedings; and the potential of video-conferencing and non-custodial measures to reduce the structural overuse of pre-trial detention. The article concludes with concrete legislative demands.

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I. Introduction: The Forest and Its Fault Lines

In October 2025, the European Criminal Bar Association (ECBA) presented its Agenda for European Criminal Justice entitled "Redefining EU Criminal Justice: a Vision for a Fairer System".[1] Prepared in anticipation of the third meeting of the High-Level Forum on the Future of EU Criminal Justice (HLF), the document offered a significant institutional opportunity to advance these priorities at the highest political level.[2]

The Agenda describes the EU's criminal law framework as a living ecosystem: "a forest of legislation designed to protect its inhabitants from criminal behaviour and ensure their defence rights." While this metaphor is apt, it also highlights a structural issue. A forest in which some trees are generously watered while others wither produces imbalance rather than vitality. The ECBA's core contention, developed through years of engagement with practitioners, is that the EU's criminal justice forest has been cultivated with systemic asymmetry: mutual recognition instruments and prosecutorial tools have flourished, while the procedural safeguards and defence rights that lend legitimacy to the system have been left in the shade.

The consequence is fragmentation. Many issues are governed by each EU Member State's law, leading to different procedures and procedural outcomes. These include whether a suspect whose assets haven been frozen can access the case file; whether a lawyer can attend a search of their client's home; whether the suspect or accused receives a copy of a seized digital device; whether intercepted communications are admissible in subsequent prosecutions; whether evidence may be obtained through hacking; whether a person of limited means may choose their own lawyer in a cross-border case; and whether a defendant living in another Member State can attend the trial remotely.

The 2009 Stockholm Roadmap produced six Directives on procedural rights.[3] They brought long-needed structure, but the framework remains under construction and progress has stalled. Meanwhile, the EU criminal justice landscape has evolved dramatically: the European Public Prosecutor's Office (EPPO) is operational, mutual recognition instruments have multiplied, digital evidence has come to dominate investigations, and the mandates of Europol and Eurojust have expanded. The Lisbon Treaty transformed judicial cooperation from a fragmented, intergovernmental system into a constitutionalised area of EU law, strengthening democratic oversight, enhancing the role of the Court of Justice of the European Union (CJEU), and anchoring fundamental rights at the core of cooperation. However, the system still resembles a patchwork: framework decisions, directives, and regulations having been developed incrementally and often lacking coherence and interoperability, creating legal uncertainty and uneven protection of rights across Member States.

The HLF, launched in February 2025, was an institutional response to this context. Among defence practitioners and civil society organisations, the ECBA, the CCBE, and Fair Trials were formally invited and took part throughout the Forum's work. The ECBA engaged actively: it attended every plenary meeting and, in November 2025, submitted detailed written comments on the draft final report, building directly on its Agenda for European Criminal Justice.

This article presents the ECBA's intervention at the HLF.[4] As outlined in the Agenda, the ECBA's approach is structured around two tracks: the first ("the protective embrace of the forest's trees") addresses existing instruments that require targeted repair; the second ("a healthy forest to ensure our future") concerns the coherent, long-term architecture that the EU must build. Three intersecting themes run through both tracks and are reviewed in this article:

- The need for the Lisbonisation and coherence of the mutual recognition framework;
- The structural gaps exposed by the EPPO's operation;

- The transformative potential of video-conferencing technology and non-custodial supervision measures to reduce the overuse of detention, in particular in cross-border settings.

II. Track One (Immediate Interventions): Repairing the Existing Instruments

1. Lisbonisation and coherence: from patchwork to an integrated system

The Lisbon Treaty profoundly changed the constitutional framework of EU criminal justice, yet instruments in place before Lisbon, most notably the Framework Decision on the European Arrest Warrant (FD EAW) have not been systematically updated to reflect that transformation. This has resulted in a structural mismatch: instruments designed under the intergovernmental logic of the third pillar (under the Amsterdam/Nice framework) now operate within a constitutionalised legal order that imposes compliance with the EU Charter of Fundamental Rights (CFR), full CJEU jurisdiction, and democratic oversight by the European Parliament. Recasting these instruments is therefore not merely a technical exercise but a constitutional and structural imperative.

The ECBA's Agenda therefore calls for either a comprehensive instrument consolidating the *acquis* or, at minimum, clearer rules on how instruments relate to one another and on their subsidiary application. No measure adopted under one instrument should undermine rights guaranteed under another. Each new legislative act in EU criminal law should include a mandatory cross-reference provision to applicable safeguards to ensure its application does not lead to decisions that violate other EU legal instruments. Explicit rules on interaction and conflict resolution, alongside a requirement for integrated, proportionate application (making detention the last resort rather than the default) would have positive systemic effects beyond the formal legal framework, including less pre-trial detention and prison overcrowding, and a more proportionate use of coercive measures overall.

At the HLF, the ECBA presented this as the overarching principle underpinning its entire intervention: "any extension or strengthening of enforcement measures must be accompanied by reinforcement of procedural safeguards and defence rights to preserve equality of arms and fairness of the procedure".[5] Mutual trust, the foundation of the EU's judicial cooperation architecture, cannot be sustained by instruments that operate in silos. Rather, it requires a coherent framework in which rights and obligations are clearly articulated, instruments interact predictably, and individuals can rely on consistent protections regardless of which instrument is invoked or in which Member State proceeding are brought.

2. The European Arrest Warrant: a tree that requires a trim

The ECBA describes the European Arrest Warrant (EAW) as "one of the oldest trees in the forest" that "requires a trim to flourish." From a Member State's perspective, the EAW system is a success story. From the defence perspective, however, this is less certain. The gradual recognition of a fundamental rights exception by CJEU case-law, since *Aranyosi* and *Căldăraru*,[6] has not resolved the instrument's structural deficiencies. The EAW has become the default tool even when less intrusive alternatives would suffice; it is frequently used for investigative purposes, for minor offences, or on stale facts, resulting in serious personal and financial costs for the accused and for the public purse.

During the HLF, the ECBA urged the European Commission and the Member States to undertake a long-overdue revision of the FD EAW, aligning it with CJEU case law and curbing disproportionate use. The proposed reform should encompass the following:

- A case-specific proportionality test at the issuing stage, based on the likely custodial sentence to be delivered rather than the statutory maximum;
- A consultation procedure, modelled on the Directive relating to the European Investigation Order (EIO), allowing the executing state to trigger less coercive alternatives, such as an EIO or a European Supervision Order (ESO);
- The codification of human rights violations as an explicit, mandatory ground for refusal to surrender;
- A fully-fledged right to dual defence[7] and legal aid;
- A mandatory video-link hearing after arrest, enabling the issuing state to either maintain the EAW or to request an alternative measure;
- Guaranteed access to the case file in the issuing state without delay;
- Rules for cross-border summons and hearings by video-link to reduce reliance on the EAW at the investigative stage;
- A right of appeal against surrender decisions;
- Mutual recognition of decisions refusing surrender;
- An independent, EU-level mechanism to regulate the issuance and continued validity of Schengen Information System (SIS) alerts.

The vast majority of Member States at the Forum took the position that no legislative revision of the EAW is necessary, arguing that reliance on the CJEU's evolving case-law has been a sufficient corrective. The ECBA rejected this approach on both principled and practical grounds: First, CJEU's case-law is no substitute for clear, binding legislative standards that issuing authorities and requested persons can rely on with certainty. Second, the European Parliament called for legislative action as far back as 2014; a decade later, that call remains unanswered.

3. Mutual recognition of refusal decisions: a seedling to nurture

The Agenda identifies the absence of mutual recognition of refusal decisions as a "seedling" in urgent need of nurturing. When one Member State has refused to surrender a person (e.g., on grounds of *ne bis in idem*, fundamental rights, or proportionality), this decision has no binding effect on other Member States. A person whose extradition has been refused in Member State A on EU-wide grounds can nevertheless be arrested, detained, and surrendered upon entering Member State B, facing renewed deprivation of liberty in each jurisdiction and effectively turning free movement under Art. 21 TFEU into a source of legal jeopardy.

The ECBA's proposals address this gap directly.[8] A refusal based on *ne bis in idem*, on grounds pursuant to Recital 12 of the FD EAW, or on the proportionality principle should have permanent, EU-wide effect, binding all Member States. A refusal based on the risk of ill-treatment contrary to Art. 19 CFR or of a flagrant denial of justice should likewise be binding on all Member States until evidence that the risk no longer exists is provided. Once a permanent refusal decision has been issued, the creation or continued processing of data

in the SIS or through Interpol's Red Notices system should be prohibited, with effective judicial remedies available for breaches.

4. The EIO and the coherence of the mutual recognition framework

Beyond the EAW, the ECBA advocated a systematic approach to the EU's entire mutual recognition framework. The current patchwork of instruments creates conditions for forum shopping, generates legal uncertainty, and incentivises the circumvention of safeguards through instrument choice. The EAW and the EIO should not be treated as interchangeable; their relationship should be governed by an explicit subsidiarity principle requiring prior consideration and, where appropriate, use of the less coercive instrument. For the EIO specifically, the ECBA reiterated the need to reinforce defence rights in cross-border investigations through dual legal representation and a robust principle of speciality.

The ECBA also raised the need to improve the legal framework governing Joint Investigation Teams (JITs), as the absence of clear rules on applicable law and access to JIT documentation creates room to circumvent both national and EU safeguards. Proper regulation of the cross-border service of procedural documents would reduce the disproportionate reliance on the EAW and prevent trials in absentia, which violate Directive 2016/343.

III. Track Two (the Long-Term Vision): Cultivating a Coherent Forest

1. Procedural safeguards: where the forest is thinnest

Of all the pillars of the HLF, procedural safeguards generated the greatest divergence of positions between Member States, on the one hand, and defence lawyers' associations, academics, and civil society, on the other. The key issues discussed were:

Pre-trial detention. The ECBA stresses that there is a clear EU legal basis for action on detention, in particular pre-trial detention (Art. 82(2)(b) TFEU) and urges the adoption of binding EU standards of protection. Data from the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment of Punishment (CPT) confirm that no Member State fully complies in practice with European detention standards. Various sources have documented prison overcrowding and the disproportionate use of pre-trial detention as a default rather than a last resort.[9] At the HLF, representatives from the Member States unanimously opposed binding action at EU level. The Forum's conclusions, which call for further soft-law measures, amount to a deferral rather than a response, given that a non-binding Recommendation has been in place since 2022 without resolving the underlying structural problem.

- **Legal professional privilege.** EU law provides no harmonised standard for the protection of legal professional privilege in criminal proceedings. In a cross-border environment marked by pervasive digital surveillance and EU agency involvement, this gap creates serious risks for lawyer-client communications. The ECBA therefore advocates binding EU rules to protect legal professional privilege, with particular attention to digital evidence, where the protection of privileged information is crucial.

- **Admissibility of evidence and exclusionary rules.** Although Member States accepted recommendations from the High-Level Group on Access to Data to develop EU minimum rules on mutual admissibility of prosecution evidence derived from interception of communications, those same Member States firmly opposed EU legislative action on exclusionary rules and defence-side admissibility standards. In the ECBA's view, it is unacceptable to seek expanded, harmonised capacities to retain

and use communications data while refusing to legislate on the admissibility of such data as evidence, or on the exclusion of unlawfully obtained material thereby jeopardising fair trial rights.

2. The EPPO: Cross-border evidence, defence rights, and the limits of harmonisation

The establishment of the EPPO marks a paradigm shift: for the first time, the EU exercises direct prosecutorial powers across borders. However, this development exposes structural gaps. The EU still lacks a fully harmonised framework for gathering evidence across borders. Divergences in national procedures raise serious questions about the admissibility and lawfulness of evidence, as well as equality of arms. These issues are particularly pertinent in EPPO proceedings, as they by definition span multiple jurisdictions, each with its own rules on investigative measures, judicial authorisation and evidentiary standards.

In this context, defence rights must be strengthened, not diluted. The ECBA emphasises the need for consistent procedural safeguards, effective remedies (including exclusionary rules for unlawfully obtained evidence), and access to legal aid across borders. Without these measures, EPPO proceedings risk exacerbating existing inequalities. The final HLF report noted that defence lawyers' associations emphasised the need for stronger procedural safeguards in EPPO cases.[10]

The urgency is compounded by proposals to extend the EPPO's competence to violations of EU restrictive measures, which would add further complexity to its multi-jurisdictional workload. Therefore, any revision of the EPPO Regulation should establish explicit and binding procedural rights for the suspect and accused, including access to the file in the pre-trial phase, judicial review of EPPO investigative decisions, and harmonised standards for particularly intrusive investigative measures – especially the gathering of e-evidence and the use of AI-processed material.

3. Video-conferencing: a proportionality tool, not a convenience

Video-conferencing has evolved from a pandemic-era workaround to an increasingly normalised feature of cross-border criminal proceedings. The ECBA's position is clear:[11] video-links can be valuable tools, but virtual presence is not equivalent to physical presence and, if used without proper safeguards, risk undermining fair trial rights.

From a proportionality perspective, the potential of video-conferencing in a cross-border setting is significant. For example, a mandatory video-conferencing hearing after arrest under an EAW would allow the issuing state to reassess whether surrender remains necessary and proportionate. Could the suspect or accused be interviewed? Could alternative measures be ordered? Should the EAW be maintained or replaced by supervision or an EIO? This single procedural step could substantially reduce the use of EAWs for investigative purposes, which currently account for a substantial share of those issued. Similarly, clear EU rules allowing suspects or accused persons residing in another Member State to be heard via video-link at pre-trial, investigative, and certain trial hearings – without prejudice to the right to be present in person – would reduce pressure to arrest and detain individuals solely to secure attendance.

Video-link also offers solutions to mitigate the risks posed by trials in absentia. It can facilitate participation from another Member State, potentially avoiding surrender while preserving meaningful procedural involvement – provided that the accused retains the right to consent or refuse participation, interpretation is available where needed, and technical standards ensure reliable identification and secure, confidential lawyer–client communication.

That said, video-conferencing cannot substitute for the right to be physically present at trial. Participation in a trial by video-link should always require the accused's informed and express consent. Parity of arms in technology. ensuring comparable tools, quality, and connectivity for prosecution and defence, must also be guaranteed.

4. Non-custodial measures: rethinking supervision to reduce detention

A structural reform of the EU's non-custodial supervision instruments is one of the most discussed priorities. The European Supervision Order (ESO) was designed to allow suspects and accused persons to remain in their Member State of residence under supervision as an alternative to pre-trial detention. Despite its advantages, including enhancing proportionality, reducing unnecessary deprivation of liberty, and enabling individuals to prepare their defence more effectively, the ESO remains seriously underused in practice.

The reasons for this are well documented: the lack of a mandatory proportionality assessment in respect of the non-use of the measure, complex procedures, a lack of awareness among practitioners, weak operational cooperation between issuing and executing authorities, and the absence of direct supervision mechanisms.[12] The ECBA therefore calls for a fundamental rethink of how these instruments operate. Rather than relying solely on the executing state to organise supervision – a process that is slow, resource-intensive, and often unfamiliar to local authorities – consider schemes in which the issuing state retains direct supervisory responsibility while the person remains in their Member State of residence, with assistance from local law enforcement and probation authorities as needed. Such arrangements should be placed on an EU legal footing to ensure consistency, accountability, and genuine operational uptake.

Another underused mechanism is house arrest with electronic monitoring as an alternative to pre-trial detention. Several Member States already employ it domestically as a standard alternative to pre-trial detention.[13] At EU level, no harmonised framework governs such measures in cross-border cases. The ECBA considers it timely to explore the legal feasibility and operational benefits of establishing minimum EU standards for house arrest with electronic monitoring as an alternative to pre-trial detention in cross-border settings. This would help alleviate prison overcrowding and reduce the personal and financial costs of unnecessary detention, while maintaining the person's connection to their home, family, and legal counsel.

These proposals should not be treated as secondary. Overcrowding and the overuse of pre-trial detention are one of the most serious systemic failings of European criminal justice.[14] Addressing it requires both binding minimum standards and operational instruments that make non-custodial alternatives genuinely viable. A reformed ESO, a direct supervision framework, and harmonised electronic-monitoring standards are the practical instruments through which the principle of detention as ultima ratio can be given real effect.

5. Digitalisation: efficiency in service of fairness

On digitalisation, the ECBA's proposals strike a balance between embracing the potential of digital tools and insisting on clear safeguards for their deployment. The Agenda emphasises that digitalisation should not be an end in itself but a means to fairer and more effective proceedings, in full compliance with procedural safeguards and defence rights.

On artificial intelligence (AI), the ECBA warns against dehumanising criminal justice through over-reliance on technology and identifies specific high-risk applications, such as predictive policing (risk of algorithmic bias), sentencing and parole tools (opacity/"black box" issues), and digital forensics relying on large datasets

without defence access to the underlying data. The ECBA recommends that any framework for the responsible use of AI include the following:

- Clear ethical guidelines based on international standards;
- Transparency, documentation, and independent third-party audits;
- Meaningful human oversight and accountability;
- Disclosure of AI involvement in decisions;
- Limits on AI for core judicial acts;
- Safeguards for the presumption of innocence and non-discrimination.

Beyond this, during the HLF, a digital mechanism to check whether parallel related cases are pending was discussed. was discussed. The ECBA proposed expanding it in order to enable the defence to ascertain whether multiple proceedings for the same facts are underway and to verify whether closed proceedings in another Member State support a *ne bis in idem* argument.

6. EU JHA Agencies: expanding power, lagging accountability

While the operational powers of the EU's justice and home affairs agencies Europol, Eurojust, and the EPPO have expanded, the framework for judicial oversight and accountability has not kept pace. At the Forum, the ECBA reiterated the governing principle of its Agenda's (see II.2 above): there should be no further expansion of these agencies' powers without commensurate safeguards. The ECBA called for a stronger framework for judicial control at EU level and for structured communication channels with Eurojust and the EPPO, which would enable defence lawyers to request information, challenge jurisdictional decisions, and participate meaningfully in processes affecting their clients.

7. Substantive criminal law: values-based, not security-centred

On the future of substantive criminal law is concerned, the ECBA adopted a position of principled selectivity. While endorsing the Forum's evidence-based approach and welcoming a more values-based orientation over a purely security-centred one, it opposed broad expansion of EU-level approximation of substantive criminal law. Such expansion often makes national criminal law frameworks more rigid, sometimes hindering appropriate decriminalisation, affecting the principle of subsidiarity, and impeding the necessary narrowing of offence definitions. The ECBA's contribution focused on three themes: robust *ne bis in idem* protections, the need for coordinated EU reflection on AI-enabled crime, and the insistence that legislative speed must not come at the expense of legality, foreseeability, and proportionality .

IV. The Forum's Balance Sheet: Progress Made, Work Remaining

The HLF's final report is, as it openly acknowledges, a synthesis of "sometimes contradictory views".[15] It documents Member States' systematic preference for soft law on defence rights, in contrast to their readiness to accept binding standards when law enforcement is the beneficiary.

The ECBA regrets the lack of openness by Member States at the HLF and the very limited outcomes in this area, notably the exclusion of matters relating to pre-trial detention.

The ECBA will continue to advocate for binding rules and urges the EU legislature to establish a permanent forum that includes defence stakeholders and continues to address the issues discussed at the HLF.

V. Conclusion: Five Legislative Demands for the Next Institutional Cycle

The ECBA's Agenda for European Criminal Justice concludes with a call that is both diagnosis and programme: a new EU roadmap that would provide a vision for the future and keep the forest healthy. This requires closing gaps, ensuring coherence and interoperability of the judicial cooperation instruments (EAW, EIO, ESO), adapting to emerging trends, and promoting strong procedural safeguards. Without a clear plan, confidence in the EU criminal justice system – and the Union more broadly – will erode, jeopardising mutual trust on which cooperation depends.

The ECBA therefore calls on the European Commission and the Union legislature to pursue the following five concrete legislative priorities in the current institutional cycle:

- **Lisbonisation and coherence of the mutual recognition framework.** Pre-Lisbon framework decisions should be recast into a coherent, post-Lisbon system with explicit rules on how instruments interact, a mandatory subsidiarity principle requiring the least coercive measure available to be considered first, and a proportionality requirement making detention genuinely a measure of last resort. The systemic effects would be substantial, including reduced pre-trial detention, less prison overcrowding, and a more proportionate use of coercive measures overall.
- **Amendment of the EPPO Regulation** to enshrine explicit procedural rights for the suspect and accused and to harmonise evidence-gathering standards. This should include binding rules on access to the case file in the pre-trial phase; mandatory prior judicial authorisation for intrusive investigative measures; clear standards for the collection and admissibility of e-evidence; clear standards for the use of AI-processed material and the outputs of surveillance measures; and effective judicial review of EPPO investigative decisions by competent national courts.
- **A dedicated EU instrument on the use of video-conferencing in criminal proceedings.** This instrument should establish:
    - The right of the accused to request a video-link hearing in cross-border proceedings and require a mandatory video-link hearing after arrest under an EAW to allow the issuing state to decide whether to maintain the warrant or seek alternatives;
    - Rules for remote participation in investigative hearings and, subject to the suspect or accused's consent; lay down technical and procedural standards, including confidentiality of lawyer–client communication and reliable identification to ensure fairness;
    - A proportionality requirement to ensure that video-links serve as a tool to reduce unnecessary detention and other coercive measures.
- **Reform of the European Supervision Order and European Probation Framework** to increase operational uptake and make non-custodial alternatives genuinely viable. This should include:
    - An EU legal basis for direct supervision schemes, under which the issuing state retains supervisory responsibility for the individual in their state of residence, with possible assistance from local enforcement and probation authorities;

- An assessment of the legal feasibility of harmonising house arrest with electronic monitoring as a standard alternative to pre-trial detention in cross-border settings; these rules should build on the experience of Member States that already use electronic-monitoring schemes in domestic proceedings.

- **Harmonised minimum standards for pre-trial detention** that include the use of house arrest with electronic monitoring as an alternative. Based on Art. 82(2)(b) TFEU and justified by evidence from the EU Fundamental Rights Agency, the CJEU case-law on detention conditions, and persistent overcrowding of pre-trial detention facilities across the EU, these standards should set clear rules on conditions, duration, and judicial review of pre-trial detention, and require a mandatory proportionality assessment to determine whether the same objectives could be achieved with less harm by using house arrest with electronic monitoring.

Justice in Europe must be about more than just efficiency. Justice in Europe must protect individuals not only from crime but also from arbitrary interference, disproportionate intrusion, and inequality before the law. Reaffirming the centrality of the rule of law and fundamental rights within the EU criminal justice system – in short, placing them at the very heart of the forest – is essential to achieving a genuine Area of Freedom, Security and Justice. This needs to be the standard against which the EU legislature's post-HLF actions are ultimately judged.

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1. The Agenda is available at: <https://www.ecba.org/extdocserv/projects/ECBA%E2%80%99sAgendaforEuropeanJustice.pdf>. All hyperlinks in this article were last accessed on 4 August 2026.↩
2. See also the ECBA's press release on the Agenda at: <https://www.ecba.org/content/index.php/publications/statements-and-press-releases/951-the-ecba-s-agenda-for-european-criminal-justice-redefining-eu-criminal-justice-a-vision-for-a-fairer-system-october-2025>.↩
3. The Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings outlined key areas where action should be taken at EU level to strengthen procedural defence rights. This Roadmap led to the adoption of 6 directives on the rights to interpretation and translation, to information, to access to a lawyer, to legal aid, the protection of the presumption of innocence, and procedural safeguards for children suspected or accused in criminal proceedings.↩
4. The ECBA's interventions at the HLF were based on: the ECBA's Agenda for European Criminal Justice, *op. cit.* (n. 1); the ECBA's written comments on the draft Report of the High-Level Forum on the Future of EU Criminal Justice, submitted to the European Commission on 5 November 2025; the Report of the High-Level Forum on the Future of EU Criminal Justice of 1 December 2025; the Guest Editorial published by Vânia Costa Ramos in eucrim 1/2025, 1; and internal ECBA practitioner discussions. The oral interventions of the Chair and ECBA Vice-Chair at the four HLF plenary sessions are also reflected throughout this article.↩
5. Verbal intervention by Vania Costa Ramos at the high-level forum.↩
6. CJEU, 5 April 2016, Joined Cases C-404/15 and C-659/15 PPU, *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*.↩
7. One could even argue for a broader concept of "total or global defence", including not only the issuing state and executing state but any relevant jurisdiction – see, for the context of EPPO proceedings, V. Costa Ramos, "The EPPO and the equality of arms between the prosecutor and the defence". (2023) 14(1) *New Journal of European Criminal Law (NJECL)*, 43, 55-57.↩
8. See ECBA Statement on Mutual Recognition of Extradition Decisions at : <https://ecba.org/extdocserv/publ/ECBA_STATEMENT_Mutualrecognitionextraditiondecisions_21June2022.pdf>.↩
9. For example, see European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *35th Annual Report on its activities (2025),* p.11, available at: <https://rm.coe.int/48802b585f>; K. Kamber, "The overuse of pre-trial detention as a public policy and human rights problem", *Confederation of European Probation (CEP)*, <https://www.cep-probation.org/the-overuse-of-pre-trial-detention-as-a-public-policy-and-human-rights-problem/>; Prison Insider, "Concrete to counter overcrowding? The figures and realities behind the rhetoric", 15 July 2025, <https://www.prison-insider.com/en/articles/le-beton-contre-la-surpopulation>; I. Aydinoglu, "Beyond capacity: Europe's prison overcrowding challenge", *Penal Reform International*, 11 December 2024, <https://www.penalreform.org/blog/beyond-capacity-europes-prison-overcrowding-challenge/>. See also, UN, *United Nations System Common Position on Incarceration*, April 2021, <https://www.un.org/ruleoflaw/wp-content/uploads/2021/12/UN_System_Common_Position_on_Incarceration.pdf>.↩
10. See Report of the High-Level Forum on the Future of EU Criminal Justice, <https://commission.europa.eu/document/download/606f0f38-12f9-4893-8941-3ac835229bcd_en?filename=JUST_template_comingsoon_standard_16.pdf>, pp. 16-17.↩
11. This approach was developed in the Agenda, *op. cit.* (n. 1) as well as in the ECBA's Statement of Principles on the use of Video-Conferencing in Criminal Cases in a Post-Covid-19 World, 6 September 2020, available at: <https://www.ecba.org/extdocserv/20200906_ECBAStatement_videolink.pdf>, and in its survey of criminal defence lawyers on the use of video-conferencing in criminal and European Arrest Warrant proceedings, 2024, available at: <https://www.ecba.org/extdocserv/projects/Cyber/202410_9_ECBA%20_Feedback_criminaldefenselawyers_variousEUstates.pdf>.↩
12. See for example, V. Glerum and H. Kijlstra, "Overarching Analysis", *Mutual Recognition 2.0 Research Project*, <https://mutualrecognitionnextlevel.eu/sites/mutualrecognition/files/2025-06/MR%202.0%20Overarching%20Analysis.pdf>; pp. 89-92, 101, 139. M. Daliani, Factsheet on the European Supervision Order, *EPHESUS*, <https://www.ephesus-project.eu/uploads/1/4/4/7/144711219/1._eso_factsheet_en_v01.pdf>; Fair Trials, "Blog: Why are alternatives to the European Arrest Warrant not being used?", 8 April 2021, <https://www.fairtrials.org/articles/news/blog-why-are-alternatives-european-arrest-warrant-not-being-used/>; E. Sellier and A. Weyembergh (eds.), *Criminal procedures and cross-border cooperation in the EU area of*

criminal justice, Comparative study, 2020, <https://library.oapen.org/bitstream/handle/20.500.12657/40047/9782800417219.pdf?sequence=1&isAllowed=y>, pp. 341-345; A. M. Neira-Pena, "The Reasons Behind the Failure of the European Supervision Order: The Defeat of Liberty versus Security", (2020) 5(3) *European Papers*, 1493-1509, available at: <https://www.europeanpapers.eu/system/files/pdf_version/EP_EF_2020_I_042_Ana_Maria_Neira_Pena_00402.pdf>.↩

13. J. Burchett and A. Weyembergh, *Prisons and detention conditions in the EU*, February 2023, <https://www.europarl.europa.eu/RegData/etudes/STUD/2023/741374/IPOL_STU(2023)741374_EN.pdf>, p. 83; see also, W. Hammerschick, "D2.2 Pre-trial detention alternatives: Best practices", *PRE-TRIAD Project – Alternative pre-trial detention measures*, 2021, <https://www.uibk.ac.at/media/filer_public/8f/0c/8f0c02ec-44c7-46ab-be88-839b07db8a3b/d22-pre-trial-detention-alternatives-best-practices.pdf>, pp. 33-36, who alerts though to the risks of net-widening when not used as a true alternative to pre-trial detention.↩
14. Council of Europe, "Serious overcrowding and increasing proportions of older and women detainees in European prisons - Council of Europe's 2025 penal statistics for the continent published", <https://www.coe.int/en/web/portal/-/serious-overcrowding-and-increasing-proportions-of-older-and-women-detainees-in-european-prisons>; CPT, 35th Annual Report on its activities (2025), *op. cit.* (n. 9).↩
15. See High Level Forum Report, *op. cit.* (n. 10), p. 6.↩

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