

Conference Report

Opening Ceremony

Vânia Costa Ramos — *Chair of the ECBA*

The conference opened with a welcoming address by Vânia Costa Ramos, who noted the symbolic significance of the date, a day of liberty celebrated in both Portugal and Italy. She presented the programme for the day, outlined the mission of the ECBA and its Working Groups, and introduced the newly launched ECBA website as the central hub for members, tools and activities. Participants were encouraged to engage actively, network, and connect with Working Group members throughout the day.

Clara Martínez Nogués — *President, Criminal Section, Il·lustre Col·legi de l'Advocacia de Barcelona*

Clara Martínez Nogués delivered a passionate address on the essential role played by lawyers in counterbalancing power and protecting citizens from the excesses of the system. Her remarks set a strong human rights tone for the rest of the conference.

Human Rights Award

Alexis Anagnostakis — *ECBA Human Rights Officer*

The Human Rights Award was presented by Alexis Anagnostakis, HR Officer, to Ali Yildiz, founder of the Arrested Lawyers Initiative. Alexis described Ali as "a fighter with a kind heart" and a valued friend. The Initiative was established in 2016 in response to the systematic persecution of lawyers arrested for the exercise of their professional duties by documenting and monitoring abuses by governments worldwide. Ali's work gives a voice to lawyers who have been silenced.

The award was received under a standing ovation. In a brief and moving acceptance speech, owing to genuine shyness rather than any shortage of things to say, Ali reflected on the pressures facing the profession: "Our profession is under attack in all countries. Let us stick together and defend it."

Keynote Address

Prof. Dr. h.c. Lorena Bachmaier Winter — *Keynote Speaker*

Prof. Bachmaier Winter reflected on the enduring struggle to preserve human freedom, invoking Eleanor Roosevelt's 1948 Sorbonne address to highlight the continued relevance of defending rights and the rule of law in Europe. Despite pessimistic views about Europe's

current political, economic and social challenges, she argued that optimism and action are essential. Focusing on the European Area of Freedom, Security and Justice, Prof. Bachmaier Winter stressed that mutual recognition depends on genuine mutual trust—something strained by diverse legal systems. Cross-border criminal justice, increasingly shaped by digitalisation, raises complex issues for defence rights, equality of arms, evidence gathering, and lawyer-client privilege. EAW or EncroChat cases illustrate these tensions. Prof. Bachmaier Winter called for clearer supranational rules, especially for electronic evidence, while acknowledging the slow pace of EU legislation. She concluded that building “unity in diversity” requires safeguarding defence rights, ensuring effective procedural protections, and preparing for AI’s impact on mutual trust and fair trials.

Panel 1 — Freedom of Speech

Chair: Katarzyna Dabrowska · Panellists: Jaantje Kramer, Christophe Marchand, Benet Salellas, Ben Keith

The panel was opened by Chair Katarzyna Dabrowska with a quotation from Churchill on the double standards often applied to free expression. Four presentations were delivered, followed by an open Q&A.

Jaantje Kramer — Protest, Social Media and the Right to Assembly

Jaantje Kramer explored the intersection of freedom of speech and the right to protest, focusing on the act of publicising a protest on social media. She presented the example of a Dutch citizen who posted on social media an invitation to join a roadblock organised by an NGO in response to climate concerns. Dutch authorities treated the post as an act of incitement to commit an offence (carrying up to five years’ imprisonment, a penalty that, it was noted, significantly exceeds that for actually blocking a road). Those involved were arrested, detained, and had their devices confiscated.

The case was challenged before the ECtHR and resulted in a friendly settlement with the Dutch Government. Domestic courts had classified the post as incitement to commit a crime (blocking a road) rather than a protected exercise of the right to protest, imposing community service sentences between 30 and 60 hours.

Key legal principles identified:

- Council of Europe Guidelines on Freedom of Assembly: there is a presumption of peacefulness, allowing organisers to communicate about planned events.
- The freedom to protest includes the right to choose the time, location and form of protest, roadblocks constitute a legitimate form of protest.
- Any interference by public authorities must comply with the ECHR. Case law establishes a minimum duration for a protest before any lawful intervention (at least two hours).
- The Aarhus Convention (Art. 3(8)) protects the right to protest on environmental matters; guidelines by Special Rapporteur Michel Forst and the UNECE mechanism are available tools for practitioners.

Key takeaway: Restricting the right to communicate about a protest is equivalent to restricting the right to protest itself.

Ben Keith — Chilling Effects on Journalists

Ben Keith addressed the severe and growing threats to journalists, particularly those covering sensitive topics outside the EU. He outlined two examples of transnational repression:

- Russia: A journalist who covered the war in Ukraine was prosecuted in Russia for a visa violation. This effectively restricts the journalist's ability to travel to countries with extradition links to Russia, directly limiting their reporting.
- China: UK-based journalists have been followed and subjected to intimidation campaigns by individuals linked to the Chinese Embassy, who attend public events to monitor and deter critical coverage.

Ben Keith highlighted the use of Interpol Red Notices as a tool of disguised political persecution, citing requests from Egypt, Bahrain, and Oman. He also noted that the UK had cooperated with a Turkish mutual legal assistance request concerning a Facebook post critical of the Turkish government thereby enabling pressure on reporting.

Key tools for practitioners: Art. 10 ECHR (threshold for extradition cases), Interpol's control mechanisms, and the broad EU definition of journalistic activity.

Christophe Marchand — The Assange Case and Its Chilling Effects

Christophe Marchand, who headed Julian Assange's European legal team and authored a report presented to the European Parliament, reviewed the procedural history of the case and its broader systemic consequences:

- Criminal proceedings used as punishment.
- Self-censorship: stories not published out of fear of legal reprisals.
- Increased impunity: without reporting, war crimes and other abuses go unaccountable.

He raised the open question of whether Assange qualified as a political prisoner, and whether a distinct protective framework should be developed for individuals in comparable situations. He emphasised the importance of Art. 10 ECHR in extradition proceedings alongside Arts. 3, 6, 9, 10, and 11 (the latter two requiring a higher threshold).

Key takeaway: The Assange case must not become a precedent. A conviction would have a disproportionate chilling effect on public interest journalism worldwide.

Benet Salellas — Overprotection of Power in Spain

Benet Salellas examined how entrenched institutions such as the Catholic Church, the Crown, the armed forces, or the concept of Spanish unity, continue to benefit from asymmetric legal protection that suppresses legitimate criticism. He presented examples of this oppression:

- A 2016 Gay Pride poster depicting two virgins kissing was prosecuted for blasphemy. The case was dismissed.

- Burning of images of the King and Queen: convicted for insulting the Crown, upheld by the Spanish Supreme Court as hate speech (see ECtHR, *Roura i Stern v. Spain*, 2018).
- Use of hate crime legislation to shield police from public criticism, despite courts ruling that police forces do not constitute a protected group under hate speech law.
- Prosecutions relating to Catalan independence statements and activists, with several cases eventually dismissed or acquitted.

He drew attention to the Amnesty Act of 2024, which expressly excludes acts of disrespect, criticism, or insult directed at public authorities, symbols, or emblems from its scope.

Q&A Highlights

- Proposal to draft an ECBA policy paper on freedom of speech (Søren Schomburg).
- Warning against expanding hate speech to the EU catalogue of offences in the EAW context, given its potential for misuse against legitimate protest.
- Importance of focusing Art. 10 ECHR analysis on the proportionality of sanctions, not solely on whether speech is protected.
- Debate on regulating social media to counter disinformation: panellists broadly agreed that greater media literacy and accountability of platform owners are preferable to further speech restrictions.
- EU sanctions and Art. 10 ECHR: the sanctioning of journalists in the Russia-Ukraine context was flagged as requiring further analysis.

Panel 2 — E-Evidence Regulation

Chair: María Barbancho · Panellists: Brendan Newitt, Judge José Manuel Sánchez Siscart, Julian Hayes, Stephanie Schott

Brendan Newitt — The E-Evidence Package: An Overview

Brendan Newitt provided a concise overview of the EU e-evidence legislative package:

- Key deadlines: Directive transposition by 18 February 2026; Regulation application from 18 August 2026.
- Instruments: European Production Orders (EPOC) and Preservation Orders (EPOC-PR).
- Three categories of data: subscriber data (who), traffic data (how, when, where), and content data (what).
- Scope: offences carrying a minimum sentence of three years, plus a list of specific offences; special conditions apply for traffic data.
- Grounds for non-compliance by ISPs are narrow: immunities, privileges, or journalistic freedom protections.
- Grounds for refusal by executing authority (10-day window): ne bis in idem, double jeopardy, or privileged data.
- Sanctions for ISP non-compliance: fines of up to 2% of annual global turnover.

Brendan Newitt flagged significant gaps: limited explicit remedies for due process violations, and uncertainty as to whether Art. 13 ECHR requires a domestic remedy for privacy breaches arising from an EPOC.

Judge José Manuel Sánchez Siscart — The Spanish Judicial Perspective

Judge Sánchez Siscart noted that 90% of criminal cases in Spain rely on geolocation data, metadata, and online activity as primary evidence. Under Spanish law and CJEU case law, prosecutors do not qualify as independent judicial authorities; prior judicial authorisation is required to access data.

The judge outlined the framework for legitimate interference with privacy in the digital context:

- Legitimate aim, strict necessity (least intrusive means), legal basis, and fairness.
- Key CJEU precedents: *Digital Rights Ireland* (2014); ECHR cases including *Pietrzak v. Poland*, *Podchasov v. Russia*, and *Skoverne v. Slovenia*.
- *Benedik v. Slovenia*: confirmed that dynamic IP addresses constitute personal data therefore judicial authorisation is required to access them.
- Proportionality in terrorism cases: exceptions permitting expedited access require a serious, genuine, present or foreseeable threat to national security, a time limitation, and prior judicial review.

Stephanie Schott — German Implementation

Stephanie Schott reported on the implementation of the E-evidence package in Germany (the legislation entered into force on 13 March 2026). Key features of the German legislation:

- A new Federal Office of Justice has been established as the central authority to monitor ISP compliance.
- Non-compliance by ISPs is classified as an administrative offence.
- Data exchange will be carried out via e-CODEX, a secure decentralised network (not a central platform).
- No enforceable EU-level right to privacy protection in e-evidence collection, though member states may introduce domestic protections.
- A practical concern: in Germany, there is no right to request evidence, which means defence practitioners cannot themselves request an EPOC or EPOC-PR.

Julian Hayes — Cross-Border E-Evidence Involving the UK

Julian Hayes outlined the UK's framework for collecting electronic evidence across borders post-Brexit. The UK relies on a combination of three approaches:

- Voluntary cooperation with service providers.
- Unilateral imposition of cross-border compliance obligations.

- Bilateral agreements (notably the UK–US CLOUD Act Agreement and the Crime (Overseas Production Orders) Act 2019).

The Investigatory Powers Act 2016 provides the primary domestic framework for exchange of evidence with the USA. It encompasses interception warrants (content) and communications data notices (subscriber/traffic data). In 2024, 343,000 warrants requested by the UK were granted, predominantly for the prevention and detection of crime. Requests from the USA were significantly less. Built-in safeguards in the legislation includes: human rights compliance, targeting restrictions, independent judicial oversight, necessity and proportionality tests, minimum sentence thresholds, and conflict of laws provisions. The main issue is that most of the safeguards, in particular when grounded in human rights consideration, are left to the appreciation of the service providers i.e. a private company.

Q&A Highlights

- Notification: individuals should be informed when their data has been accessed, but notification may be deferred in the interests of an investigation.
- The 10-day refusal window was questioned as insufficient for judicial decision-making, particularly on privilege grounds.
- The effectiveness of privacy protection in practice depends heavily on the compliance culture of individual service providers.

Breakout Sessions

Session 1 — Behaviourally Informed Interviewing in Fraud Investigations

Moderator: Rosa Van Zijl · Presenter: Tom Willems, PhD Researcher, University of Luxembourg

Tom Willems, an interview trainer for OLAF (speaking in a personal academic capacity), presented his research on developing a new interview methodology tailored to investigations into PIF (fraud against EU financial interests) offences.

Willems highlighted the distinct challenges of white-collar crime prosecutions: the highest acquittal rates of any offence category, growing involvement of criminal networks, and a recovery rate of only 2% of criminal assets (the other 98%, presumably, enjoying a comfortable retirement). For sanctions to be deterrent, conviction certainty needs to reach 20–40%, yet the standard interview approach is poorly adapted to distinguishing between a business-savvy professional and one with fraudulent intent.

Drawing on the Manual on Investigative Interviewing for Criminal Investigation, The Principles on Effective Interviewing for Investigations and Information Gathering, and the Méndez Principles, Willems argued for a collaborative, non-coercive interview model focused on evidence collection rather than the extraction of a confession. He demonstrated techniques through a live role-play with chair Rosa Van Zijl and invited attendees to stress-test the approach against their domestic legal contexts.

Key observations from the group discussion:

- In Scotland and Ireland, interviewer expressions of personal opinion during questioning would likely be inadmissible.

- In several continental jurisdictions, suspects have access to the file before interview or may submit a written statement afterwards. This affects the strategic element of using evidence to surface contradictions.
- The importance of guarding against cognitive bias was underscored, with particular reference to contributions from sociology and criminology.

Session 2 — Procedural Safeguards: Prisoners' Rights and Detention Conditions

Moderators: Carla Reyes (Switzerland) & Elena Fedorova (France)

Prisoner's rights is an area that sits at the intersection of human rights, criminal justice, and public policy. The discussion explored key challenges and developments in this field.

The goal was not only to discuss the current landscape, but also to exchange perspectives, identify gaps, and think constructively about the role of NGOs such as the European Prison Litigation Network and Association Antigone, on the one hand, and defense lawyers, on the other hand, in addressing key challenges in prison systems across Europe, shaping policy and/or fighting for justice in individual cases.

The session was structured as a focused conversation around a few key themes. Carla and Elena guided the discussion. Hugues de Suremain, Director of the European Prison Litigation Network, presented the EPLN's work and Cristiana Bianco, ECBA member who is very active within Antigone association, presented its work and how we can better work together.

Liliia Kuznets (Ukraine), Diana Silva Pereira (Portugal), Daniel Trajilovic (Switzerland), Alex Tinsley (UK), and Federico Cappelletti (Italy) shared their valuable insights.

The session was very engaging and had a particular focus on detention conditions around Europe, strategic litigation tools to uphold prisoners' rights with a particular focus on extradition proceedings".

Session 3 — Business Crime: Environmental Criminal Law and Corporate Liability

Moderator: Tanneguy de Bellescize (France) - Presenters : Dirce Rente (Portugal) and Jean-Baptiste Maillart (Switzerland)

The third breakout session consisted in a discussion grounded in a concrete case study where we explored how lawyers can mount an effective defence for legal entities prosecuted for environmental offences. The audience shared insights about the criminal proceedings in their jurisdiction:

- criteria to engage legal entities' criminal liability,
- access to the criminal case while the investigations are ongoing,
- strategy for the hearing during the investigations,
- possibility of settlement with the example of French *c Convention Judiciaire d'Intérêt Public environnementale* Environmental Judicial Public Interest Agreement).

General Assembly

Neil Swift - *ECBA Treasurer*

The Treasurer presented the annual financial report. Expenses increased in line with the growth of the organisation's activities. ECBA finances remain healthy, with a steady surplus, a sentence that, in the context of a lawyers' association, was greeted with noticeable relief. Members were invited to submit proposals for the use of the surplus.

Oliver Kipper - *Chair, European Fraud and Compliance Lawyers (EFCL), sub-association of the ECBA*

Oliver Kipper announced the next EFCL conference, to be held in London on 12 June 2026 in partnership with the UK Fraud Lawyers Association (FLA).

Closing Remarks

Vânia Costa Ramos - *Chair of the ECBA*

The President closed the conference with thanks to all participants and the organising team. She announced the next ECBA conference, to be held in Tirana on 2–3 October 2026.

The next ECBA Conference will take place in Tirana, Albania — 2–3 October 2026