

ECBA Autumn Conference

Malta, 15 October 2022

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What is the CCBE?



CCBE Criminal Law Committee



Composition/frequency of meetings



Procedural safeguards /EPPO/EAW/Confiscation
& Freezing/etc.



Excellent cooperation with the ECBA

Procedural safeguards



Current safeguards



Evaluation



Future safeguards

CCBE work on future procedural safeguards



Contact with the Czech Presidency



Contact with the Swedish Presidency



Meeting with the European Commission Director for Criminal Justice



Meeting with the Council Justice section






Continuous contact with the Fundamental Rights Agency





Meeting with the EPPO

Overview of recent procedural safeguards interactions

-  31 May – contact with Czech Presidency
-  31 May – contact with upcoming Swedish Presidency
-  12 September – meeting with the Council, Justice
-  15 September – meeting with the EPPO, Luxembourg
-  29 September – meeting with the Director for Criminal Justice, DG Justice, Commission
-  3 & 4 October – participation in FRA meeting on access to a lawyer
-  10 October – webinar on “Surveillance and the impact of modern spyware tools on Fundamental Rights”

Short term – expected measures

 Commission - infringement proceedings against Member States for the incomplete or incorrect implementation of the procedural safeguards Directives.

 The Commission has sent follow-up letters of formal notice to a number of Member States regarding 5 of the Directives.

Current work



Minimum rules for the mutual admissibility of evidence



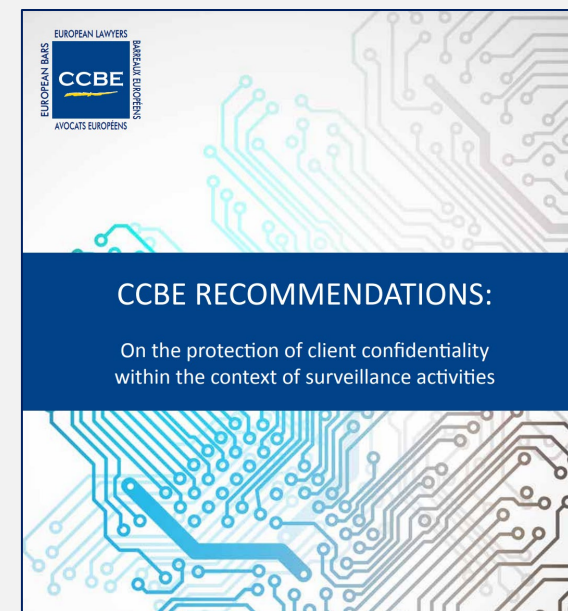
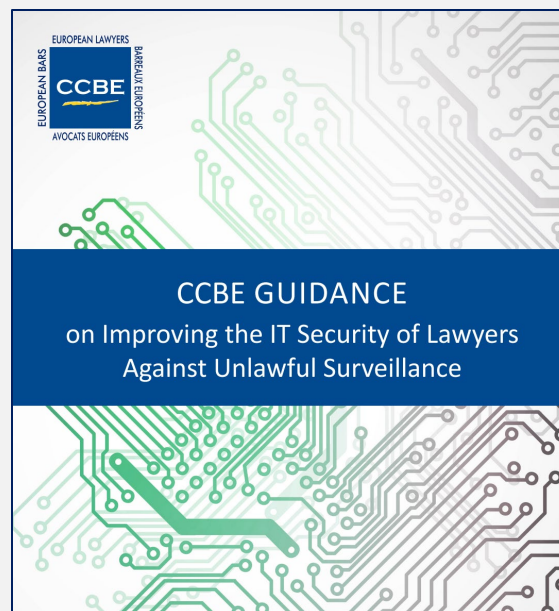
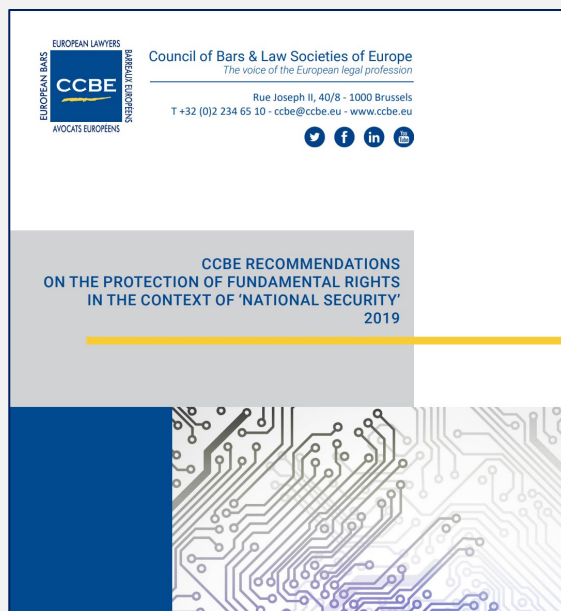
Pre-trial detention



Transfer of proceedings

Surveillance





CCBE aims to ensure the protection of professional secrecy as a fundamental guarantee of the rule of law in relation to governmental practices involving the interception and tracking of communications data for the purpose of surveillance and law enforcement



Artificial intelligence

Active in AI issues – these are issues that also require extensive safeguards.

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CCBE position paper on the proposal for a regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters
29/07/2022

EXECUTIVE SUMMARY

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers.

The proposal should recognise and integrate, national IT systems, including those operated by Bars and Law Societies, for communication between lawyers and Courts or other competent authorities.

The use of the European electronic access point should not undermine the use of these professional IT systems for communication between lawyers and Courts.

The European electronic access point should ensure that national procedural requirements, such as forms, language and legal representation are respected. The right to legal assistance and the conditions concerning the use of the European access point by lawyers should be clarified in the proposal.

The CCBE would like to recall that the Commission has no competence with regard to national judicial proceedings and hence cannot demand any changes to procedural laws and impose the use of videoconferencing.

The CCBE considers as inappropriate the provisions of Recital 21 concerning the possibility to apply mutatis mutandis the rules of taking evidence to hearings through videoconferencing, in the absence of national rules governing the use of videoconferencing.


While understanding the will to stay technologically neutral, the CCBE believes that the possibility to use other means of communication than videoconferencing for hearings, without clarifying what are those digital means of communication causes legal uncertainty.

The CCBE considers that the consent of the parties on the use of videoconferencing should be a general principle applicable in all proceedings. Article 7.3 should provide that the decision of the competent authority to organise a hearing through videoconferencing should be based on such consent and other circumstances related to the parties and the case.

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


Guide on the use of Artificial Intelligence-based tools by lawyers and law firms in the EU
2022


The project is co-funded by the Justice Programme of the European Union



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CCBE position paper on the proposal for a regulation laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act)
8/10/2021

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

Introduction and executive summary

On 21 April 2021, the European Commission presented a [proposal](#) for a regulation laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union legislative acts. The proposal is supplemented by 9 annexes.




The CCBE previously issued [comments](#) on the communication on the digitalisation of Justice in the EU, a [response](#) to the consultation on the European Commission's White Paper on Artificial Intelligence as well as its own [considerations](#) on the legal aspects of Artificial Intelligence.

With this paper, the CCBE wishes to further develop its position in relation to several aspects of the proposal for an Artificial Intelligence Act (hereafter "the AIA" or "the proposal").





In particular, the CCBE considers that:

- Despite the choice of a risk-based approach, the proposal should contain specific provisions on the use of AI in the field of Justice.
- The proposal must contain clearer prohibitions in Article 5. Any type of social scoring should be prohibited, as well as automated recognition of human features in publicly accessible spaces or the use by AI systems of biometrics to categorise individuals into clusters.
- A judge should not be allowed to delegate all or part of his/her decision-making power to an AI tool: there should be prohibited in the field of Justice not only automated decision making by AI systems but also the use of those AI systems which produce "decisions" of a nature which might tempt a human judge simply to adopt such decisions uncritically – effectively rubber-stamping what in effect would be automated decision-making.
- The entire decision-making process must remain a human-driven activity and human judges must be required to take full responsibility for all decisions. A right to a human judge should be guaranteed at all stages of the proceedings. Annex III.8 and Recital 40 should clarify that, where an AI system may be used to "assist" judicial authorities, the possibility of it doing so to, in effect, reach decisions or formulate the expression of such decisions is excluded.

Anti-money laundering

-  Commission package of proposals
-  Numerous interactions/hearings/position papers
-  Confidentiality/legal professional privilege/importance of independence and self-regulation

Sanctions

-  7th October 2022 – 8th sanctions package introduces a prohibition on legal advisory services
-  October/November – Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures
-  Failure to comply with an obligation to provide information to the competent authorities
-  Failure to report a violation of a Union restrictive measure or conduct that seeks to circumvent such a measure in violation of a specific obligation to report contained in a restrictive measure.

Conclusions

Thank you!