

- The CCBE standing committee: director of the EU Agency for Fundamental Rights, Michael O’Flaherty’s speech
- Attacks on lawyers highlighted in the European Parliament
- European Convention on the Profession of Lawyer: A guarantee for the proper administration of justice and the respect of the Rule of Law
- International rules for cross-border access to e-evidence: CCBE urges the commission to postpone negotiations with the U.S. and the Council of Europe
- Code of Conduct for lawyers under GDPR adopted in Slovakia
- Procedural safeguards
- The Finnish Bar Association celebrates its centenary
- Effectiveness of access to justice in environmental matters, and how the EU has implemented the Aarhus Convention
- Anti-money laundering – Supranational Risk Assessment (SNRA)
- CCBE Committee chairs



Hearing in the European Parliament’s Subcommittee on Human Rights (DROI)

## THE CCBE STANDING COMMITTEE: DIRECTOR OF THE EU AGENCY FOR FUNDAMENTAL RIGHTS, MICHAEL O’FLAHERTY’S SPEECH

On 28 February, the CCBE held its Standing Committee in Vienna, where members discussed issues relevant to EU lawyers and Bars. The CCBE gave a warm welcome to a very special guest: Michael O’Flaherty, Director of the EU agency for fundamental rights.

Michael O’Flaherty addressed key issues related to the protection of fundamental rights, such as the distinct role of lawyers in that regard and issues related to the Rule of Law, migration and artificial intelligence.

He also stressed the important CCBE’s leadership thereon and mentioned some of the actions taken in this regard, notably the actions taken to support endangered lawyers worldwide as well as the 2018 Human Rights Award which the CCBE awarded to Polish lawyer, Mikołaj Pietrzak, for his exceptional involvement and continuous work in support of human rights and the Rule of Law.

He also underlined the striking lack of solidarity and mutual support in the field of migration policies. Accordingly, he reminded the audience of the massive role of lawyers in asylum procedures, including appeal procedures, and encouraged the CCBE to continue its great response and assistance to the migration situation, notably in Greece.

Finally, he addressed some of his expectations related to artificial intelligence, such as the need for the CCBE to provide input notably on the issues of quality and adapted regulation, and the need to ensure the protection of human rights by effectively invoking the Charter of fundamental Rights.



Michael O’Flaherty, Director of the EU agency for fundamental rights, speaking at the CCBE Standing Committee in Vienna



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## INTERNATIONAL RULES FOR CROSS-BORDER ACCESS TO E-EVIDENCE: CCBE URGES THE COMMISSION TO POSTPONE NEGOTIATIONS WITH THE U.S. AND THE COUNCIL OF EUROPE

The CCBE has made several [recommendations](#) following a critical assessment of the proposed reforms to the international rules governing cross-border access to e-evidence for the purpose of criminal investigations.

Following the proposed regulation on [European Production and Preservation Orders for e-evidence in criminal matters](#) (“e-evidence proposal”), the Commission recently presented [two negotiating mandates](#), one for negotiations with the United States and one on the Second Additional Protocol to the Council of Europe “Budapest” Convention on Cybercrime. Under these proposals, law enforcement authorities would have the right to compel international data transfers from service providers located in another jurisdiction without the need for a Mutual Legal Assistance Treaty (MLAT).

This direct cooperation between law enforcement authorities and service providers would circumvent the current system which is underpinned by stringent judicial oversight procedures, and would also put the confidentiality of lawyer-client communications at risk. The objective of the proposed legislation is to drive efficiency in the way in which cross-border access to e-evidence is sought and processed.

The CCBE acknowledges the deficiencies and procedural fragmentation evident under the current rules. However, the removal of the in-built safeguards which characterise the MLAT process have the potential to significantly undermine procedural safeguards. Instead, the CCBE favours the approach of reviewing and improving current MLA procedures, for example by making them faster through the use of digitisation and by taking measures to better equip national authorities to respond to cross-border requests.

It is the considered view of the CCBE that as long as the European Parliament has not taken a position on the e-evidence proposal, it is premature for the European Commission to seek to negotiate international instruments using the e-evidence proposal as a reference point. The CCBE therefore urges that these negotiations be postponed until the European Parliament has taken a final stance on the file.

In its position paper, the CCBE outlines three key precautionary [recommendations](#), as well as seven contingency recommendations should the proposal continue along the current trajectory by establishing direct cooperation instruments.

### CCBE positions and guides adopted

- » [CCBE Assessment of the U S CLOUD Act](#) (28/02/2019)
- » [CCBE recommendations on the establishment of international rules for cross border access to e-evidence](#) (28/02/2019)

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## CODE OF CONDUCT FOR LAWYERS UNDER GDPR ADOPTED IN SLOVAKIA

Yes, we know, “say GDPR one more time and...”. But despite the oversaturation of the legal services market with GDPR news, let us share some good news with you.

On 4 December 2018, the Office for Personal Data Protection of the Slovak Republic (the Office) approved the Code of Conduct of the Slovak Bar Association pursuant to Article 40 of the GDPR as a specific interpretation tool of GDPR rules for the specific sector of the legal profession. This is historically the first code of conduct approved in Slovakia and most likely one of the first codes of conduct approved under the GDPR regime in the European Union.



The Slovak Bar Association had been preparing and internally consulting on the Code of Conduct since August 2017. The Slovak Bar Association entrusted the drafting of the Code of Conduct to its Public Law Working Group and its GDPR Subgroup. All lawyers were given the opportunity to comment on the Code of Conduct via the Slovak Bar Association’s website.

The wording of the Code of Conduct was changed several times in proceedings before the Office. Overall, the Office’s approach has been very constructive and professional, and it has been possible to openly discuss matters relating to GDPR and lawyers with representatives of the Office.

The Code of Conduct addresses many issues in the field of personal data protection that have for a long time been problematic or questionable for lawyers when ensuring their own compliance or when providing legal services in this field. For example, the Code of Conduct clarifies the role of lawyers as data controllers, the legal basis for the processing of personal data, distinguishes between the obligations of micro, small and large law firms, specifies obligations towards non-clients, clarifies the provision of DPO services by lawyers, etc.

The provisions of the Code are supplemented by practical examples, case studies and checklists. If you are interested in the content of the Code, please visit the [Slovak Bar Association's website](#).

Personal data protection is a very specific matter for lawyers due to the confidentiality obligation. We hope that the adopted Code of Conduct will help lawyers, clients, as well as the Office for Personal Data Protection when dealing with these specific and often contradicting rules.

**Slovak Bar Association Delegation to the CCBE**

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## PROCEDURAL SAFEGUARDS

The Commission is in the process of preparing a report on the implementation of the ["Access to a Lawyer"](#) Directive. The report will be available in November 2019. On 20 December 2018, the Commission published the (a) [Report on the implementation of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings](#) and, (b) a second [report on the implementation of the "Right to information" Directive](#) (the assessment report of the implementation of the Access to a Lawyer Directive will follow the same format).

Member States must implement Directive 2016/1919/EU on legal aid for suspects or accused persons in criminal proceedings, the [Legal Aid Directive](#), before 25 May 2019. The Directive lays down common minimum rules concerning the right to legal aid for:

- (a) suspects and accused persons in criminal proceedings; and
- (b) persons who are the subject of European arrest warrant proceedings.

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## THE FINNISH BAR ASSOCIATION CELEBRATES ITS CENTENARY



The Finnish Bar Association was founded in 1919. Today, it is an organisation whose activities are regulated by the Act on Advocates of 1958. The association has over 2,100 members. The organisation's statutory tasks are to regulate and supervise the activities of lawyers. Other key objectives include enhancing the quality of legal services, educating and supporting its members and actively taking part in legislative work.

The anniversary will be celebrated throughout 2019 with the theme "Lawyers defend the Rule of Law". Local chapters of the association will organise several activities all over Finland. Furthermore, the Finnish Bar Association has launched a powerful video portraying established and up-and-coming lawyers. The main focus of the video, entitled "Our Dreams Change the World", is to highlight the values and work of lawyers.

["I have a dream. Of a world in which nobody is subjugated just because they are unable to defend their rights. And when I am asked for help, I'm there for them."](#)

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## EFFECTIVENESS OF ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS, AND HOW THE EU HAS IMPLEMENTED THE AARHUS CONVENTION

On 20 December, the Commission published a questionnaire/consultation on the effectiveness of access to justice in environmental matters, and how the EU has implemented the Aarhus Convention. The questionnaire is open for responses until 14 March. The CCBE PD Lux considers the topic of access to justice and compliance with the Aarhus Convention of crucial importance, because access to justice constitutes one of the most important pillars of the Rule of Law. The PD Lux has prepared a draft response which sets out why the EU Aarhus Regulation needs to be amended and which considerations are crucial when considering compliance with the Aarhus Convention. The PD Lux has also proposed suggestions for amendments to be made to the EU Aarhus Regulation.

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## ANTI-MONEY LAUNDERING - SUPRANATIONAL RISK ASSESSMENT (SNRA)

On 18 January, the CCBE participated in the second Commission consultation regarding the 2019 Supranational Risk Assessment (SNRA). The Commission is in the process of updating its 2017 SNRA Report (which was very critical of the legal profession) and the Commission's Report will be published June 2019. In advance of the meeting, the CCBE sent comments to the Commission on the outcome of the previous SNRA report, and identified issues which it hopes the Commission will address in the updated SNRA Report.

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## CCBE COMMITTEE CHAIRS

Every year, a number of committee chair and vice-chair positions become vacant. The CCBE Presidency carries out an assessment of the role, the relevance and activities of the Committees and Working Groups concerned, before deciding to launch a call for candidates for vacant positions. For Committees and Working Groups with vacant chair positions, the Presidency has approved updated Terms of References in 2019.

The following chairs and vice-chairs have been appointed in 2019:

- » Deontology Committee: Bertrand Debosque as Chair and Nick Fluck as Vice-Chair;
- » Human Rights Committee: Stefan von Raumer as Chair;
- » International Legal Services Committee: Carlo Forte as Chair;
- » The Insurance Working Group was upgraded to a Committee and Herman Buysens was appointed as Chair;
- » IT Law Committee: Carla Secchieri as Vice-Chair;
- » Criminal Law : Ondrej Laciak as a Chair.

The delegations proposed very good candidates. The choice was not always easy for the Presidency because the candidates were very strong and often had equal skills to contribute effectively to the Committee's activities.

The CCBE President has congratulated the new Chairs and Vice-Chairs and wished them every success in carrying out their mandate.

### ▷ e-Curia – CCBE Guide has been updated

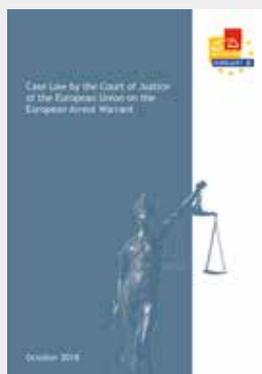
The CCBE has updated its practical guidance to using e-Curia (the Guide is available on the [CCBE website](#)). The practical guidance is addressed to lawyers and it focuses on helping lawyers avoid surprises and understand the various procedures involved.



e-Curia is intended for lawyers and agents of Member States and of institutions, bodies, offices and agencies of the European Union, and enables the exchange of procedural documents with the Registries of the Court of Justice and the General Court by electronic means. As from 1 December 2018, the e-Curia application (which was optional) is the only means of exchange of legal documents between parties' representatives and the General Court. A representative of a party that does not yet have access to the e-Curia application will need to request the opening of such an account. It is hoped that the CCBE's updated Guide will be of assistance.

### ▷ "33 EU Court of Justice rulings on the European Arrest Warrant"

Eurojust has recently published its [2018 Overview on the Case Law of the Court of Justice of the European Union \(CJEU\) on the European Arrest Warrant \(EAW\)](#).



It is a practical guide for the use of EU Member States' judicial authorities that are involved in the judicial response to cross-border crime. The overview presents a unique set of concise summaries of these judgements, and lists and provides hyperlinks to the judgements that are relevant in relation to a specific aspect of the EAW. This Guide will be of use to practitioners. For more information and a detailed presentation of the overview, click [here](#).

## UPCOMING EVENTS

14/03/2019 *Round Table on the Future of the European Court of Human Rights - Brussels*

29/03/2019 *Standing Committee - Rome*

17/05/2019 *Plenary Session - Porto*