

# MINUTES

**42<sup>nd</sup> Presidents' Conference**

**of the**

**European Bar Associations and Law Societies**

**in Vienna**

**27 February – 1 March 2014**

**“Vienna Advocates’ Conference”**

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Ladies and Gentlemen, Please take your seats and let us begin with the European Presidents' Conference. On behalf of the Austrian Bar, Austrian lawyers and Austrian trainee lawyers, I would like to welcome you most cordially. On behalf of our sponsor of many years – Bank Austria UniCredit – I would like to welcome most cordially Mag. Peter Kretschy. I would like to ask him to address us briefly.

***Peter KRETSCHY, Bank Austria UniCredit Group, Austria:***

*Interpretation from German*

Dear Guests of Honour, President Wolff, dear Ladies and Gentlemen, on behalf of the Management Board of UniCredit Bank Austria I would like to welcome you here to today's 42<sup>nd</sup> European Presidents' Conference.

It is a great privilege for me that for many years we have been a proud sponsor of this very high-level event and we will continue to be so. I would like to underline, in particular, that in the course of all these years we have built up very good relations with the professional association of lawyers here in Austria, that is to say the Austrian Bar. As far as the Service Centre for the Liberal Professions is concerned, I can tell you that throughout Austria we have good contacts to well-established law firms and that we also make available our financial advice and provide our services to start-up offices.

It is also very important that we jointly need to use the first signs of an economic recovery in the euro area. We all hope for an economic upswing in Austria, where the forecast is 1.5 per cent. So, when it comes to financing, to investments, when it comes to escrow accounts, we can be at your disposal with our experience and expertise.

Concerning your topic of today – “Data leak – How does a country under the rule of law react?” – I would like to tell you, as the representative of a major bank with a regional network in Central Europe, that the basis for our operations is the good confidence and the trust of our customers. It is therefore a very important topic for us and we attach top priority to the protection of personal and business data. Let me also mention that, in our view, it will be very important to have a uniform solution for the euro area and also on an international scale because cyber crimes and data abuse is something that does not stop at national frontiers.

Ladies and Gentlemen, Let me wish you a very pleasant stay here in Vienna, both at the social events – the reception by the Federal Chancellor, the reception by the Federal President, and also tomorrow at the *Juristenball* at the *Hofburg* – and during a successful conference here today. After all, we are one big community – if I may say so – here in Austria, in the centre of the continent, but also as a bank with a broad regional network. So, let me wish you all the best and thank you very much for making it possible for us to assist and to support you.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

It is a very special honour for me to welcome the Vice-President of the Austrian Constitutional Court, Dr. Brigitte Bierlein. A cordial welcome to you! And it is also a great honour for me to welcome the First General Prosecutor, Dr. Franz Plöchl. Welcome and good morning! Among our honorary guests we have the former Federal Minister of Justice and the President of *Österreichische Juristentag*, Dr. Nikolaus Michalek. A cordial welcome to you! I would particularly like to welcome the Dean of the Law Faculty of the University of Vienna, Professor DDr. Mayer. A cordial welcome to you! I would like to cordially welcome the Legal Protection Commissioner and retired General Procurator, Dr. Gottfried Strasser. Let me welcome as representative of the Federal Ministry of Justice, Head of Unit and Senior Public Prosecutor, Mag. Michael Aufner. A cordial welcome to you!

Dear Colleagues, It is a great honour to me to welcome our speakers of today: James MacGuill, Chairman of the Criminal Law Committee of the CCBE, Dr. Thilo Weichert, Privacy Commissioner of the Independent StateCentre for Privacy Protection in Schleswig-Holstein in Germany, Mag. Max Schrems, founder of the association “europe-v-facebook.org” and Dr. Gert Polli, former Director of the Austrian Federal Agency for State Protection and Counterterrorism. We will also be able to welcome Mag. Dimitrios Droutsas, who is still on an airplane on his way from Brussels to Vienna. He is a Member of the European Parliament and the former Foreign Minister of Greece. I hope that Mr. Droutsas will make it and arrive here in time so that he can address us.

I would particularly want to welcome the honorary presidents of the Austrian Bar, Dr. Klaus Hoffmann and Dr. Gerhard Benn-Ibler.

I would like to express special thanks to our sponsors: the Bank Austria UniCredit Group, the City of Vienna, Uniqa, the insurance company, and EDV 2000 Systembetreuung GmbH.

Now, very briefly, let me make a few housekeeping remarks: We plan to have a coffee break of about 15 minutes at about 11 o'clock. We need to close at 1.30 p.m. and need to leave Palais Ferstel by that time in order to be on time at the reception by the Federal Chancellor. The welcome words by the Federal Chancellor or his representative have been scheduled for 2 p.m. At 3 o'clock we will walk from the Federal Chancellor's office to the office of the Federal President of Austria, where we should arrive at about 3.10 p.m. The Federal President, Prof. Dr. Heinz Fischer, will receive us. A hearty lunch will be provided at the Federal Chancellor's office.

Dear Presidents, Ladies and Gentlemen, - Let us begin with today's conference. The topic is very exciting. If you had a look at today's newspapers, you will have read (this was on the first page of Austria's daily newspapers today) that the data of 400,000 test results of Austrian pupils as well as the private e-mail addresses of 36,000 teachers at Austrian schools were leaked from a server with public access. The data can be linked to the individual teachers so that a ranking can be made, which teacher has the best-performing pupils and which teacher has the pupils with the poorest performance. One of the questions in the survey was, for example: How many days are there in a week? The answers varied between five and seven. I hope that by the end of the conference we will know the right answer.

Let me follow our agenda and let me call on Mr. James MacGuill, who is our first speaker today. He graduated from the University College Cork. In 1986 he was licensed as a solicitor, and he has been working as such in Dundalk and in Dublin, especially in the field of public law, but also in the field of criminal law and human rights. He took part in many complex international criminal proceedings. He served as President of the Law Society of Ireland in 2007 and 2008. He was also head of the Irish delegation to the CCBE from 2012 to 2013. And he is currently the chairperson of the Criminal Law Committee of the CCBE. Mr. MacGuill, the floor is yours.

***James MACGUILL, Chairman of the Criminal Law Committee of the Council of Bars and Law Societies of Europe (CCBE), Ireland:***

**(You can download the presentation of James MacGuill, Chairman of the Criminal Law Committee of the Council of Bars and Law Societies of Europe, at [www.e-p-k.at](http://www.e-p-k.at).)**

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much, James MacGuill. Thank you and Judge Leon for this excellent presentation. We have learned much about the various aspects of the subject that you dealt with: “governments in contempt of court”, that is what we learned. We also learned about the “Charter of Violation of Personal Security”. We heard about such concepts as “data harvesting“. You also pointed out how important it is that the bar associations throughout Europe represent not only the interests of their own clients but also the interests of the principles of the rule of law, as well as those of the citizens of their respective countries.

Now, I would like to invite Dr. Thilo Weichert to take the floor. He is a lawyer and also a political scientist. He studied in Freiburg and Geneva. He is a lawyer, he is a politician, he is an author, but he is also a teacher at Freiburg, in Stuttgart, Dresden und Hannover. Mr. Weichert was also a member of the Regional Parliament of Baden-Württemberg; he was a Justice Commissioner at the Saxonian Defence Ministry, and he was also the legal advisor to a citizens’ committee on the abolition of the Security Agency. He was chairperson of the German Association for Data Protection (the acronym is DVD). He was an assistant of the Data Protection Commission of Lower Saxony and is now the Regional Commissioner for Schleswig-Holstein and head of the Independent Regional Centre for Data Protection in Kiel.

Mr. Weichert, you have the floor!

***Dr. Thilo WEICHERT, Privacy Commissioner of the Independent State Centre for Privacy Protection Schleswig-Holstein, Germany:***

(You can download the presentation of Dr. Thilo Weichert, Privacy Commissioner of the Independent State Centre for Privacy Protection Schleswig-Holstein, at [www.e-p-k.at](http://www.e-p-k.at).)

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much, Mr. Weichert. You gave us a very vivid presentation showing us how data protection is structured in Europe, compared to the non-existing protection of data in the United States. Quite drastically and quite realistically you showed us what measures need to be taken to avoid a digital dictatorship. Austrian lawyers fully support such initiatives that will avoid and prevent a digital dictatorship.

I would now like to call upon the next speaker, and I would like to introduce him briefly. Mag. Maximilian Schrems studied law at the University of Vienna. He also studied at Santa Clara University in California. As a project manager, he worked on the Comenius Individual Student (sic) Mobility Programme of the European Union. He also participated in the drafting of regional laws for Vienna and the federal law on registered partnerships on behalf of the Green Party. He works on the research team of Professor Schweighofer at the University of Vienna. There, he worked on the Smart project (international data exchange among police authorities). In Austria he became very well known because of his activities for europe-v-facebook.org. This has led to intensive lecturing assignments. Since 2012 he has been the chairman of europe-v-facebook.org.

Mr. Schrems you have the floor!

***Mag. Max SCHREMS, Founder of europe-v-facebook.org, Austria:***

(You can download the presentation of Mag. Max Schrems, Founder of the europe-v-facebook.org, at [www.e-p-k.at](http://www.e-p-k.at).)

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much, Mag. Schrems for this paper which was an eye opener in many respects. How does the constitutional state respond? By the absence of any action. It does not react at all. You very drastically showed us what actually happens to deleted information. You talked about a so-called “oil rush”, which is a very descriptive expression. You also explained how data can be used to generate further data. I personally put down that it is not the content of data that is interesting but the collection of data as such, data that will be then interlinked and further processed. You very drastically and emphatically demonstrated to us that it is not sufficient to create a legal framework – irrespective of whether this would be a framework of constitutional rights or a framework based on legislation. However, we have to instil life into this framework. Thank you, for your presentation!

The next speaker on my list of speakers is Dr. Gert Polli. Let me briefly introduce him. In 2002 Dr. Gert Polli was put in charge of setting up and running the Austrian Federal Agency for State Protection and Counterterrorism (BVT). He held this position up to 2008. The Federal Agency for State Protection and Counterterrorism is considered to be the civil secret service of Austria. It is also responsible for anti-espionage activities and counterterrorism, but

it is also the point of contact and the cooperation partner for foreign intelligence agencies, especially when it comes to issues such as sensitive security data, with which we are dealing.

For almost 30 years Dr. Polli worked for intelligence agencies, including, amongst others, the military foreign intelligence service of the Republic of Austria. After serving in this position at the Federal Ministry of the Interior, he held different positions in industry. He was also the head of the corporate security system of Siemens AG.

Dr. Polli then founded his own company, i.e. Polli-IPS, which specialises in counter-espionage and in assisting individuals and companies in coping with critical security situations in Austria and abroad.

Dr. Polli, you have the floor.

***Dr. Gert R. POLLI, Former Director of the Austrian Federal Agency for State Protection and Counterterrorism, Austria:***

(You can download the presentation of Dr. Gert Polli, former director of Austrian Federal Agency for State Protection and Counterterrorism, at [www.e-p-k.at](http://www.e-p-k.at).)

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much, Mr. Polli. Your presentation, too, was an eye opener for many of us. Not only our children and their facebook entries are affected, also the business community is affected and, of course, also law firms and the data that are filed and archived in law firms.

And now I would like to welcome Mag. Dimitrios Droutsas. Thank you, for having come to Vienna! Mag. Droutsas studied law at the University of Vienna. He was then an assistant for European law at the University of Economics here in Vienna. He then became director of the Diplomatic Office in Greece under Giorgos Papandreou. He was Deputy Foreign Minister and then Foreign Minister of Greece. At present, he is a Member of the European Parliament.

Mr. Droutsas, you have the floor!

***Mag. Dimitrios DROUTSAS, Member of the European Parliament and former Foreign Minister of Greece, Belgium:***

(You can download the presentation of Mag. Dimitrios Droutsas, Member of the European Parliament and former Foreign Minister of Greece, at [www.e-p-k.at](http://www.e-p-k.at).)

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, Mr. Droutsas for your critical and analytical outline of the data protection regulation and the data protection directive and the work of the European Parliament. Please, do not lose your optimism, do believe in the common cause and, please, fight for it.

Ladies and Gentlemen, We will now break for coffee. Please, be back in this room at 11.35 a.m.

*Coffee break*

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

Dear Ladies and Gentlemen, Let's start with the second part of our European Presidents' Conference. Please take your seats. You may wish to bring your coffee along. Please, do so. I will have to be a little tight with the time management. As I mentioned before, we will leave at 1.30 p.m. We will leave Palais Ferstel at 1.30 p.m. to be in time for the reception at the Chancellery.

*Interpretation from German*

Please, take your seats. I would like to thank all speakers for their interesting and stimulating presentations. Dr. Polli unfortunately had to leave us already because of other obligations. All the other lecturers are available and will answer any questions you may have.

I would like to say a few words about the topic "Data leak – How does the state under the rule of law react?" – I would like to invite the representatives of Bar Associations, the members of the Permanent Senate and all participants of this European Presidents' Conference to engage in a discussion of this topic.

Article 1 of the Austrian Constitution states: "Austria is a democratic republic. Its laws derive from the people." After the presentations by the speakers we almost had the impression that legislation has ignored the people. It is our task to give the people the laws that they deserve.

Mr. Droutsas put this into very clear language. He said we have to become aware of the signals emanating from civil society and we have to take action on them. If we do not listen to our citizens, then – soon – they will not listen to us either and will cease to trust us. This applies to all decision-makers in our countries – not only to the elected politicians.

May I ask you for your comments, please? I have a request for the floor by President Wolfgang Ewer from *Deutscher Anwaltsverein*. Please!



***Prof. Dr. Wolfgang EWER, President, Deutscher Anwaltsverein, German:***

*Interpretation from German*

Dear President Wolff, Dear Colleagues, first of all I would also like to thank you very much for these truly interesting presentations.

Dr. Weichert already referred to the decision of the German Constitutional Court on so-called online searches. The Court stated, amongst others, that the harvesting of private digital data violates the principle of human dignity and thus affects one of the fundamental elements of a state under the rule of law.

You, Mr. Wolff and Mr. MacGuill, have shown very clearly that we are affected by massive telephone tapping activities – not only in the context of data relating to our clients, in other words not only in the context of the attorney/client privilege – but that we as lawyers are also defendants of the rule of law and must therefore fight against it.

This gives rise to the question: What can we do? What procedural possibilities do we have to enforce the attorney/client privilege, the personal data of our clients – if necessary in court? And what are the limits, and where can we make progress only by using a political approach?

In this connection I would like to mention three key concepts. The first one is the European Charter of Fundamental Rights. Of course, it could only play a role vis-à-vis GCHQ, against Tempora, because the USA is not tied to it. I believe we will not get any major results because there are various exemptions under Article 4, para 2 of the EU Treaty, relating to national security, as well as under Article 39 on police cooperation. We will therefore not be able to successfully rely on the European Charter of Fundamental Rights in such incidents. Mr. Droutsas already described the consequences of these exemptions, also in connection with the General Data Protection Regulation.

The second level is international law. The secrecy of telephone conversations is not only protected in many national constitutions but also on the level of international law. Concerning the USA, let me refer to Article 17 of the International Covenant on Civil and Political Rights. With regard to the UK, the focus is on Article 8 of the European Human Rights Convention. Both conventions stipulate that restrictions of telecommunication secrecy must be based on specific legislation and must be proportionate. There are good reasons to doubt that UK or US legislation is sufficiently specific. So, there is much to be said that there are violations, particularly when you expect that the agreements cover specific territories. This would require that, for example, tapping of foreign data flows or data flows of foreign origin constitute the

exercise of effective state power, as defined in the Human Rights Convention. This is a slightly controversial issue, but there are good reasons for this assumption. This is where the individual citizen could take some action. Of course, states also have the option of filing complaints. For example, states could also address themselves to the UN Human Rights Committee.

The third element is the protection of fundamental rights in individual states. On the basis of what I have just said, the question arises, namely whether individual states are collectively obliged to take such steps, on account of their efforts in connection with fundamental rights. For Germany I may say that the prospects, legally speaking, are poor. I can speak for Germany and say that it has been recognised that the fundamental rights do not only trigger defence positions for individual citizens vis-à-vis governments, but also an obligation of governments to defend and protect the fundamental rights of citizens against interference from third parties, that is to say not from their own governments. It has also been recognised that this obligation exists in case of interferences by third-party states. However, the Constitutional Court holds that the state has a broad margin of discretion when assessing a situation and taking action. This obligation to protect would only be violated if absolutely no action is taken, or if the measures taken are legally insufficient. If the German Chancellor now travels to the USA in order to engage in negotiations, then we cannot say that the federal government is not taking any action, or is engaging in actions that are completely inadequate from the very start, so that there is hardly chance of success to find a valid reason to fight a violation of the obligation to protect citizens.

There is, however, one further aspect that I would also like to address and which may open up more promising options for taking legal action – it is the concept of “trade-off”. If American services take action against the citizens of other states that they would not be allowed to take against American citizens, and vice versa, if individual secret services from Europe listen in on, for example, US citizens, and if at a later point in time the data are exchanged – one could say that it would be an organised exchange of data – then the question arises, namely whether this is an interference with fundamental rights whenever the BND, for example, conscientiously accepts such data in the course of such arrangement (data that could not have been obtained in Germany with such methods)? I would like to answer this question in the affirmative. In such cases there may be claims to fight off such activities.

However, when drawing an overall conclusion, then the scope of legal action under existing law is and limited to the cases that I just mentioned. Consequently, the political dimension

moves to the foreground. This is why I think we should demand that more international law agreements should be concluded. However, they should not be restricted to “No Spy” agreements. It is simply not enough that the Chancellor’s mobile phone is no longer tapped, but we also want to see the data of our citizens protected.

I would say that for us, as lawyers, there is one more thing that is important, namely in the event that there are violations of these agreements, not only the contracting parties should have the possibility to go to the court indicated in the agreement, but that there is also the possibility for states to assume a commitment vis-à-vis the affected party, whose data are at stake, to grant him/her the option to take legal action – so that an Austrian or a German citizen would be able to defend himself or herself against such interception by NSA.

I think these are the possible courses of action that we should discuss. I believe that if the bars in Europe but also in many other countries would cooperate intensively (Mr. Weichert rightly underlined the global significance of international cooperation in the talks between Germany and Brazil), if it were possible to expand this cooperation, and if we, as lawyers, were active in this context and were to demand sufficient measures of legal protection, then we could achieve progress and come closer to finding a solution to this problem.

Thank you, for your attention!

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, President Ewer, for your comments. Thank you also for having pointed to a possible common approach for improving data protection in the interest of citizens in our countries.

I would now like to ask the representative of the Norwegian Bar Association, Ms. Berit Reiss-Andersen, for her contribution.

***Berit REISS-ANDERSEN, Head of the CCBE Delegation, Norwegian Bar Association, Norway:***

Thank you, Mr. President.

I would like to make a short comment and a question. The short comment is an answer to what we are discussing. There is obviously a very weak rule of law when it comes to data protection. The greatest problem we are facing is that the breaches of the rule of law are anonymous. We do not see when citizens’ rights are being violated because it is obvious that

we, as citizens, do have the right of privacy and protection. But there is also a right for state interference under certain criteria. I do not have to go into detail about it now.

But what I think is problematic about Snowden is that he opened the eyes of the public and of politicians on serious violations. For that fact he deserves recognition. But he also exposed legitimate data activity. What is problematic is that his actions did not really differ between the exposure of legitimate activity and illegitimate activity because surveillance will continue to exist of criminal acts but also political surveillance to an acceptable level between states. He showed an unacceptable level. That is not my point in our discussion.

My point is that I am worried that towards the end of the day it was the Guardian that decided what would be exposed to the public and what not, just to bring that problem into the debate. I think all speakers have from different angles addressed the need for regulation and the introduction of the rule of law when it comes to data activity.

I listened with particular interest to the address of Mr. Droutsas and the work done in the European Parliament. That could perhaps be a beginning of introducing regulation in the problem we are facing. But I would like, if you could elaborate a little more exactly, how is the Parliament intending to regulate this? Because I think that is the great challenge. We agree that it is an open door. We need regulation, we need protection of privacy, and we need to have our individual communication protected. But in the cyberspace and in the world today, how do we do it? How is the European Parliament planning to go about it?

Thank you very much!

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much for your statement!

Mr. Droutsas, would you like to respond directly or should we continue to take questions and comments?

I have a request by Dr. Auer, President of the Vienna Bar and First Vice-President of the *Fédération des Barreaux d'Europe* (FBE).

Mr. Auer, you have the floor!

***Dr. Michael AUER, President, Vienna Bar, Austria:***

*Interpretation from German*

Mr. President, Ladies and Gentlemen, Dear Colleagues, I would like to comment briefly on the statement by Mr. Droutsas. I would like to highlight a completely different European aspect, namely that of taxes and charges.

The European Parliament is highly ambitious when it comes to mitigating the financial distress of some Member States, and to also further expand on Directives, namely the Directive on the automatic exchange of fiscal data. You all know that the European Parliament approved a proposal according to which this Directive on the automatic exchange of fiscal data will be fine-tuned. As soon as this fine-tuning becomes effective, dividends, sales proceeds, financial gains but also credit balances, credit transfers, debit transfers, and maximum amounts on accounts will have to be reported. To whom will this be reported? Of course, within the Member States, but also to the USA, especially by those Member States which have signed the Foreign Account Tax Compliance Act, which you all certainly know. Under this treaty, a relatively large number of important Member States of the European Union assumed the obligation to set up a data exchange, which will go as far as reporting the account balances.

So, it is also very ambitious that the European Commission is granting the European Commission the exclusive power – as of now, if I understand it correctly – to negotiate agreements with third countries which will deal with this automatic exchange of information. So, the individual Member States in Europe will no longer be able to enter into bilateral agreements on the exchange of fiscal data, because the power to do so is solely with the Commission. If this is not an ambitious step, then I do not know how you define ambition. To some extent, we are to blame ourselves, I must admit, if we take a look at the other side of the medal. On the one hand, we complain about data leaks, while, on the other hand, we quite deliberately open “data canyons”, if I may put it that way, when money is involved, when we talk about taxes and charges. So, we have to blame ourselves.

Thank you!

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

Thank you, President Auer.

I now have one further request for the floor: President Stephen Dreyfuss of the *Union Internationale des Avocats*. You have the floor, Sir.

**Stephen DREYFUSS, President, Union Internationale des Avocats:**

Thank you. – I am the President of the UIA, and I am at this meeting in this capacity. However, this is a European meeting, and I am perhaps the only American here in this room. I wanted to comment on the fact that my country seems to cause concern and interest to Europe, as this meeting has shown.

To say that Mr. Schrems' observation about this being a political and a cultural issue between the United States and Europe, perhaps more than a legal one, I think, is very, very well taken. Because I just wanted to share with you what I think the reaction of the average American (I am not talking about the one in New York or in California but the one in the middle) would be to this, which is to say: I have nothing to hide. So, why do I care?

To the extent that, so far at least, and in distinction with some European countries, so far at least Europeans do not vote in American elections, the concern of our government officials and our politicians at the highest level will be the opinion of the average American who does vote, rather than the concerns that are presented by foreign countries. I am not happy about this state. But I think it is important from the perspective of "*Realpolitik*". You will all understand that.

With regard to what Mr. Droutsas was saying: I believe that the suspension of the US-European free trade agreement would meet with at least as strong an objection from industrialists in Europe, as it would from those in the United States. Perhaps one might take the position that the lack of such an agreement would cause more prejudice to Europe than it would to the United States. I say that once again with no joy. I think it is important not to have any delusions about the state of the power equilibrium that seems to exist at the current time.

So that when our President is forced to say: We will no longer listen to the phones of European leaders, that is nice but by the same token I agree with our Norwegian colleague that the rush to deify Mr. Snowden, I think has a little bit been overdone because he did expose a great many legitimate activities that put our country and potentially others at risk.

The last point I would make is that we all know as lawyers how hard it is to prove a negative. But we should not – and you should not – underestimate the impact in the United States of the argument that if we had not had a repetition of September 11 in the years since 2001, the argument is made that it is at least in part because of this kind of surveillance. We may have different opinions about the legitimacy of that argument but it is an argument that needs to be

reckoned with because I would suggest to all of you that the day after – and we all hope it does not happen – there is a repeat in a major European capital or in the United States of the September 11 terror attack, you will see the abandonment of restrictions on, or efforts to impose further restrictions on data and a setback to the efforts, that you were discussing which are, of course, laudable and very important.

Those are the observations I wanted to make. Thank you.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, President Dreyfuss, for your perspective, the perspective of an American.

Michel Benichou, Vice-President of the CCBE, has asked for the floor.

Michel, you have the floor!

***Michel BENICHOU, Second Vice President, Council of Bars and Law Societies of Europe (CCBE):***

*Interpretation from French*

Thank you, Mr. President. First of all I would like to thank all speakers who contributed many aspects to our discussion, who introduced many different issues and helped us to be better informed, but also made us more excited about the subject.

I have now one statement, one proposal and one question, which I would like to present very quickly. The statement is that apparently Europe has lost its digital sovereignty. It is the big American companies that are currently dominating the market. These companies cannot be sanctioned. When somebody steals a pencil, you have the right to search for the thief everywhere in the world. The thief will then be punished for his crime. However, if you steal my digital identity, I cannot prosecute the thief, nor can the thief be punished. So, there is clearly a big gap, which lawyers should decry.

My proposal actually links up to a proposal made by Aldo Bulgarelli, the President of the CCBE. His idea was to create a “European Lawyers’ Day”. Yesterday, this proposal was accepted in principle by the Standing Committee of the CCBE. I think we have now a topic that is very well suited for such a Lawyers’ Day, namely data protection. So, lawyers everywhere will have to speak about this issue. They must alert their clients but also civil society to these issues. After all, we are the spokespersons of civil society. As such we have to

bear a special responsibility. So, I would propose that the first European Lawyers' Day be dedicated to this particular issue of data protection.

And finally I have a question to all the speakers but particularly perhaps to Mr. Schrems. Lawyers are on Facebook, lawyers use the social media, lawyers are on LinkedIn, they are among Facebook friends, and they are among the LinkedIn groups. When all of these media are used to either sell person-related data or to give away professional secrets, shouldn't we perhaps prohibit lawyers to be on Facebook, as this is always also a violation of professional obligations and a violation of their attorney-client privilege?

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much, Vice-President Michel Benichou.

First of all, thank you that the CCBE is planning to dedicate the European Lawyers' Day to the topic of data protection. I am particularly pleased about that and I would wish that this will become the topic of the first European Lawyers' Day.

I do not want to reply to the question that was addressed to Mr. Schrems, but I am afraid that it will not be possible to impose any bans on our colleagues. They must know for themselves what they should do. Our main task is to provide information – of course, information to colleagues, but especially also to the citizens in our countries.

I have a request for the floor by President Hansjörg Staehle, representing the Federal Bar Association of Germany in his capacity as Vice-President of BRAK. President Staehle, you have the floor.

***Hansjörg STAEHLE, Vice-President, Bundesrechtsanwaltskammer (BRAK), Germany:***

*Interpretation from German*

Mr. President, Ladies and Gentlemen – First of all, on behalf of my association, thank you very much for inviting us to this extremely informative meeting. I think that we all must take up the proposals that have been put on the table by the speakers and the participants in the discussions concerning possible measures to create the rule of law also in the field of data protection. As lawyers we are particularly responsible for not remaining silent but for continuing to talk about this subject. We should not let the matter rest there. The German



Federal Bar Association will also have an event in May of this year. Let me invite you most cordially to attend this event.

Nevertheless, I think there is a small drop of bitterness that needs to be added to the wine: We are dealing here with an area that is determined by the specific features and conditions of the Internet. This means that, by definition, there will always be a way around any barrier. It is therefore my opinion that complete legal protection will not be achievable within the foreseeable future. We can only try to gradually address these issues without – this is my personal opinion – being able to ever reach that goal.

This takes me to the question that the topic of our conference should perhaps be somewhat broadened. We should not only speak about “the reaction of a state under the rule of law” but also “how could and how should we, as lawyers, react to this situation”?

To my mind the answer to this question is very much determined by technology. If I may say so, we all are quite careless about our data, also the data that we receive from our clients and that we send to our clients, often without any encoding. We should be aware that we must fully exploit the technical possibilities for protecting our data. In Germany a law has just been adopted promoting electronic communication with the courts. As of 1 January 2018, it will definitely be in force. After that date, it will only be possible to communicate electronically with the courts.

By 2016 lawyers will be required to have so-called electronic mail boxes. The German Federal Bar Association will integrate a secure data communication system (by today’s standards) for every lawyer into these mail boxes. So, I think that we will then have high-quality encoding from the beginning to the end of any communication. It should be our concern that servers for such systems can only be operated in countries where there is an adequate level of data protection. By technical means we must ensure that a level of security is created which, in my opinion, legal provisions will not be able to offer within the foreseeable future and safety. This is what I wanted to contribute to the discussion. - Thank you!

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, Vice-President Straehle, for your comments. – I cannot resist the temptation to point out that in Austria we have already implemented electronic legal communication, namely from lawyer to lawyer. In other words, we use a business-to-business system for

electronic communication between lawyers in encoded and secure form. This is not subject to any data retention provisions. The same applies to the communication from lawyers to courts and from lawyers to those administrative authorities which are taking part in the ERV system of electronic legal communication.

I can also proudly mention that it was only this week that we presented a joint project that has already been put into operation, the so-called “*TrustNetz*” – the secure communication between members of the Federal Economic Chamber and lawyers in Austria. Again, the system requires encoding and the data are not subject to data retention. We hope that we will soon also be able to offer our colleagues in Austria another tool. In our internal preparations we call this tool “secure advo cloud“. I will be very pleased to give you a detailed report about this tool at our next European Presidents’ Conference.

Now, on my list of requests for the floor there is Mr. Ivo Greiter who heads the World Jurist Organisation. He is an outstanding lawyer from Innsbruck. – Dear Ivo, please be brief in your statement!

***Ivo GREITER, Board Member, Austrian President WJA, Vice-President ÖRAV, Vice-President ÖJT, Austria:***

*Interpretation from German*

Thank you very much for giving me the floor. – Dear Rupert, dear colleagues, – The problem (and I think we noticed that in all statements) is that, generally speaking, people do not take a great interest in data protection. Very often you hear: If you do not have anything to hide, then it does not matter if others know everything about you. This attitude cannot be changed by mentioning the authoritarian regimes of the past century. People will merely react by saying that we do not have any dictatorships here in Europe. This means that, to my mind, it is our task to communicate the significance of data protection in a very vivid form. We have to demonstrate the importance of data protection by using very striking images. Here, I would like to mention two situations that have impressed me greatly, although they may seem to be trivial.

The first one is as follows: Just imagine that of every letter (and this also applies to older people who no longer deal with so many data) that you send off, the two sides of the envelope are copied and the copies are filed in central archives. This example is usually not well taken by people.

The second example is taken from an event several years ago. The winner of a speech contest on data protection gave her presentation and began by saying: “Ladies and gentlemen, Dear colleagues! I have nothing to hide. Nevertheless, I do not want to stand nude before you. “ – Thank you!

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, Ivo Greiter! Let me tell you that, as a matter of fact, in the Federal Republic of Germany, the German mail service, but in Austria also the Austrian mail service scans every letter. They justify this by saying that this is necessary in order to facilitate delivery. The Austrian Bar then directed inquiries to the Austrian postal services asking what happens to the scanned data. They received the answer that, certainly, they are not saved.

Are there any further requests for the floor? – President Ewer!

***Prof. Dr. Wolfgang EWER, President, Deutscher Anwaltsverein, Germany:***

*Interpretation from German*

Very briefly, let me just make one small comment. Dear Colleagues, - The battle against mass data harvesting needs the support of society, especially support from lawyers, but it also needs committed and undeterred political protagonists. One of these protagonists in Germany was and is Sabine Leutheusser-Schnarrenberger, who was the Federal Minister of Justice until last year. It was not the first time that she was Minister of Justice. Some of you may remember that the first time that she was appointed to this office was in 1992. She resigned in 1995 because she was not prepared to support the eavesdropping and wire tapping scheme of the Kohl government, the so-called “large-scale electronic eavesdropping operation”. She was the person who subsequently joined the complainants before the Federal Constitutional Court who ultimately clearly strengthened data protection. Mr. Weichert already mentioned the key word “online searches”. She then again became Federal Minister of Justice. For us, as a bar association, she was a very important counterpart, not only in Germany but also in Europe, in the Council, because she was always someone who fought for the protection of client data and the protection of data of citizens in general. This is the reason – and this is why I am saying this – why the German Lawyers Association is actively supporting the candidature of Mrs. Leutheusser-Schnarrenberger for the position of Secretary General of the Council of Europe. – Thank you, for your attention! – I think that Mr. Staehle wanted to add a brief comment.

***Hansjörg STAEHLE, Vice-President, Bundesrechtsanwaltskammer, Germany:***

*Interpretation from German*

I meant to support the words of President Ewer on behalf of the Federal Bar Association. During the past parliamentary session Mrs. Leutheusser-Schnarrenberger was the person who always listened to the concerns of lawyers – not for the sake of lawyers but for the sake of the rule of law. She knows how we think, and she has gained special recognition for her activities in the field of data protection, everybody knows how she stood up against data retention. We, as the BRAK, therefore also support her candidature. Thank you.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much. Mrs. Leutheusser-Schnarrenberger is very well known beyond the borders of Germany for her very courageous stance in connection with the transposition of data retention.

There is a request for the floor by Mr. Martin Solc, who will speak on behalf of IBA. Martin, please, you have the floor!

***Dr. Martin SOLC, Secretary General, International Bar Association, England:***

Ladies and Gentlemen, Mr. Polli used the word “naïveté” when he spoke about attempts to change the behaviour of secret services.

I just want to say a few words to encourage you to be more naïve than you are. Because I think this is a very important element of what we are talking about. Indeed, the bars do not have the power to change things but lawyers have a unique position in describing the link between this matter and the whole concept of human rights and the rule of law because there is a clear link between the two. And that link is not that much discussed.

Stephen pointed out in referring to post-9/11 that the results of the secret services are showing that what they are doing is useful. But it is our duty, I believe, to explain the difference between useful and right. Because that could go further, and further. Why don't we have a complete DNA database of all the citizens? It would be useful. No doubt. Why don't we have fingerprints of everyone? Why don't we expand electronic border controls everywhere? It is useful; it would help us in certain respects.

But, step by step, we would erode the whole concept of the rule of law that this society is based on. I think, this needs to be repeated and repeated by lawyers, including by pointing out

what are the impacts of that erosion on the economy and things like that. Because I understand that the average voter is probably not prepared to accept that. But still we need to keep on explaining. And we also need to keep on explaining that it is a delusion that our governments and the secret services protect the data. We can document on the basis of our clients how weak actually the governments are in protecting them. And if there is a kind of justification for gathering the data of secret services, there is certainly no justification for handing them over to the counterpart. This is also an element we should be telling the public. This is the only thing we can do, and I think we should do it.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much, Martin.

There is one further request by President Patrick Henry, *Ordre des Barreaux francophones et germanophones*, from Belgium.

***Patrick HENRY, President, Ordre des Barreaux francophones et germanophones, Belgium:***

*Interpretation from French*

Thank you, Mr. President. The Belgian Bar thinks that supreme courts are the best allies to protect professional secrecy and the right to privacy. In the coming days our association will file yet another complaint with the Constitutional Court against a law that requires our telecommunications providers to automatically store the meta data of telephone conversations and e-mail messages, without making a distinction between data covered by professional secrecy and other data. We think that this complaint has chances to be successful.

I would like to underline that we are quite aware that there is a certain incompatibility between technology and professional secrecy. It is quite difficult sometimes to force technology to submit to the need for professional secrecy. However, we live in a society where values and principles should prevail. Technology should submit to our values and not the other way around. For the fourth time since I became President on 1 September 2013 the Belgian law society has filed a court action with the Constitutional Court in order to protect our professional secrecy. You can also read this in the national report that we distributed.

One brief final comment: Harpocrates, the god of silence, is currently being menaced by Astraea, the goddess of innocence and purity, but lawyers in Belgium – and I think all lawyers represented here – are fighting for the protection of Harpocrates.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, President Henry.

I have another request for the floor, namely by President Roman Zavrsek from the Slovenian Bar Association.

Next I would like to ask our speakers to reply to the questions addressed to them, or to add their comments to our discussion. After that I would ask you all that we all invite the lawyers' organisations to present their work. – President Zavrsek, please!

***Roman ZAVRSEK, President, Bar Association of Slovenia, Slovenia:***

Ladies and Gentlemen, I have a short comment to the topic. It is not closely connected to data protection. But, of course, it is also important because we usually forget that usually breaches of data protection and professional secrecy are also made during our daily practice. So, we usually take a lot of care when we talk about data protection or the like, such as Facebook, the social media, but at the same time we forget that the breaches of data protection and professional secrecy are made in our usual daily lives. We have the problem in Slovenia with illegal searches of attorneys' offices. The attorneys are not the suspects but the searches were performed, the attorneys' servers, computers and other electronic media were taken from their offices. All the IT equipment, with software and hardware, was then analysed by the police. And these files are kept forever. So the police forces had the opportunity to go through the whole software, the entire mail servers and also the use of data, which were legally protected.

Therefore I call for the help of all presidents and all your bars to say something about such illegal searches of lawyers' offices because in such a way our professional secrecy and also personal data and the data of our clients who are not suspects are deeply breached.

Thank you very much.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, President Zavrsek. We fully support the Bar of Slovenia. We know that the CCBE has already written a letter to the Minister.

Following the order in our agenda, I would now like to ask our speakers if they would like to take the floor. First James MacGuill!

***James MACGUILL, Chairman of the Criminal Law Committee of the Council of Bars and Law Societies of Europe (CCBE), Ireland:***

Thank you very much, President. Just briefly: I would like to compliment our speaker, Mr. Droutsas, on the excellent work his Committee is doing.

I would encourage you to take heart that the level of consciousness – not only within the public but within the legal profession – about the scale of this problem is rising all the time. In a matter of further months we will strengthen your hand to secure proper protection. We all know, as a matter of fact, that all our governments are capable of misbehaviour and that persons holding power will only exercise that power properly when faced with the near certainty of independent review. So, I would like to see the legislation modified to include expressions of the relevance of the Charter of Rights, the Convention of Human Rights, spelt out as positive obligations on the Data Supervisor. We know that in prosecution measures there is never a shortage of political appetite to spell these things out at great length, and they should be spelt out on the right side as well. There must be meaningful judicial review, more than is presently there so that there will be independent courts playing a role and ensuring that the Supervisor does the job properly. And the Supervisor doing the job properly means government and big business have to do their job properly.

I cannot let the opportunity pass without addressing some observations of Mr. Dreyfuss about the scandalous criminal conduct of his government. And whatever he said about appealing to the sort of people who live in Middle America, such as Arizona, where the state governor had to veto the politicians' legislation this week providing for services being denied to people because they are homosexuals. I mean that is the sort of mind that is forming opinions in the United States. Keep it in the United States and leave Chancellor Merkel's phone alone. Need I remind you ... I am not taking it out on Stephen but I just felt it was important that we remind the United States who have elected themselves as the world's policemen that...

**Stephen DREYFUSS, President, Union Internationale des Avocats:**

I am a minister without portfolio...

**James MACGUILL, Chairman of the Criminal Law Committee of the Council of Bars and Law Societies of Europe (CCBE), Ireland:**

Excellent! But I just would like to round up by making my point about the importance of judicial oversight by quoting another American judge who, in 2009, and this is judge Bates, who said in relation to the government of the country: “The court is troubled that the government’s revelations regarding NSA’s acquisition of Internet transactions marked the third instance in less than three years, in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection programme”.

And this is not only a United States point. I was embarrassed and humiliated when Max illustrated that in Ireland we have deliberately closed our eyes for commercial gain to data violations by big business. It affects us all. That is why, Mr. Droutsas, your Committee has our support in taking measures to protect citizens and lawyers.

**Dr. Rupert WOLFF, President, Austrian Bar, Austria:**

*Interpretation from German*

Thank you very much for this contribution.

Dr. Weichert!

**Dr. Thilo WEICHERT, Privacy Commissioner of the Independent State Centre for Privacy Protection of Schleswig-Holstein, Germany:**

*Interpretation from German*

I have three remarks. The first one follows up on what Mr. MacGuill said and is addressed to the colleague from the USA and the colleague from Norway, who said that Mr. Snowden also disclosed legitimate activities of NSA. I really watched very closely and attentively to the entire disclosure activities. I have to inform you that I did not see any illegitimate information from the secret services in the USA or of the GCHQ that was disclosed. In contrast to Bradley Manning and others, Mr. Snowden tried – tried successfully – to prevent any damage to third parties and also any damage to national interests – to the extent possible – when using journalists for his disclosures.



However, in my opinion, it is not a violation of the national interest of the US if democracy and fundamental rights are made transparent worldwide for the first time, and if the violation of these fundamental rights and democratic values is made transparent, and if this triggers a global debate. The way in which terrorism is combated has to be the subject of a discussion across the Atlantic. This means that the American government and American security authorities must realise that surveillance of the entire population presents a threat to security and does not contribute to combating terrorism. Surveillance means that you generate fear. Fear provokes aggression. And aggression is, at the end of the day, the cause of terrorism. This is why I believe that the NSA surveillance activities, as they are actually practised, contribute to strengthening terrorism. This is my first remark.

The second remark was actually made by a colleague from Austria, namely to what extent should or can lawyers use Facebook. Of course, as private individuals they can use Facebook. It is up to every individual to decide to use Facebook or not. However, when authorities or companies use Facebook, or when lawyers use it in their professional capacity – that I consider to be illegal. At present a case is pending in Schleswig-Holstein, where the use of Facebook by German enterprises is being criticised. We, as the Independent Data Protection Centre of Schleswig-Holstein forbade it. Unfortunately, we lost the case in the first instance, but I do hope very much that in the appeal proceedings the Higher Administrative Court of Schleswig-Holstein will uphold our opinion.

The third remark is a very brief one. It was pointed out that technical security can never be 100 per cent. This is correct. However, this does not mean that it should keep us from implementing precisely that which is technically possible and that we have to make it happen. It is especially in the interest of lawyers' professional secrecy, but also in our very own interest that we must try to keep off not only NSA and GCHQ but also other intelligence services. This requires end-to-end encoding and anonymising services and many other tools that are absolutely meaningful and necessary. – Thank you.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Mag. Schrems, you have the floor!

***Mag. Max SCHREMS, Founder of europe-v-facebook.org, Austria:***

*Interpretation from German*

I have a long list before me, but I try to be very brief.

Concerning the first item, namely “naivety” and the possibility of implementing something of that kind – that is exactly what we were looking for, and all these companies. They say that the Internet is nowhere; it is some kind of a virtual space. All these companies (at least those on this page) have branch offices in Europe. And this is exactly what we do. For example, we are filing a complaint, and we will do this today (and this is the reason why I will have to leave soon), against the data protection agency in Luxembourg. Especially a company in Luxembourg ought to comply with the fundamental rights, irrespective of whether the parent company is somewhere in another country. This is possible. In such a case, what also comes into the play is the responsibility of the states, as was mentioned by the delegate from Germany. If you have a branch office in Europe and if you misappropriate data, then the state has the obligation to take some action. We are also thinking of this possibility in the case of Ireland, namely to file for proceedings in Strasbourg under Article 8, if nothing happens there. It certainly can be done, on this commercial basis. And this is not naïve but very realistic. This is proven by the lobbying efforts that are being made in Brussels, where this is a point.

With regard to the “conflict of cultures”: This is exactly the background that was so interesting for me. I was an exchange student in Florida for six months. The mother of my host family was the only Democrat, and the father had pump guns lying under his bed. This is a different background. People think differently about such matters. You have to accept it. I do not think that one can say that the USA will have to accept our way of thinking. However, we must create some interoperability and say: If you want to be an actor on our market, then you will definitely have to comply with our rules in these matters.

Let me refer to a small side event: In the 1920s the US Supreme Court took a decision in connection with telephone tapping. Thank God, this decision has been overruled in the meantime. However, my favourite sentence from the Supreme Court decision of that time is: “Telephone lines are as private as the highways, along which they have been lined up.” So, this approach differs slightly from our approach. Fortunately, this decision was revised later on.

With regard to the ban: I share the legal view that at least in Austria it would be absolutely illegal for a company to use Facebook. Thank God, this is currently not enforced, otherwise

everything would collapse. However, as an Austrian company I must commission a service provider who can give me legal guarantees that his processing of data is secure. The general business conditions of Facebook state, though, that they not provide any such guarantees. At some point we thought of filing a complaint with the Austrian Data Protection Commission – more or less with an empty form, which I actually could not complete it with the data which I am required by law in Austria to put into such a form. Thank God, that this is actually not being enforced today.

However, I believe that we do have a problem of monopolies being formed. All these online services are closed services. In contrast to e-mail providers, I cannot choose another provider, as this would mean Diaspora for me – I would then be all by myself in social terms and would share my photographs with myself. This is not the idea behind a social network. One could call this a malfunctioning of the market, where I can do relatively little as an individual.

In consequence, we would probably have to come up with alternatives which we would have to upgrade to the extent possible, using scrambling and encoding. For lawyers, in particular, this would have to be the standard. This is especially an issue with cloud services. Recently, I talked to an Austrian lawyer who said that they were now trying to put everything into a cloud. If you look at the contracts, you will see that they are beyond any European legal system. – The next point? Well, I better not go any further.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much! – Mr. Droutsas, please!

***Mag. Dimitrios DROUTSAS, Member of the European Parliament and former Foreign Minister of Greece, Belgium:***

*Interpretation from German*

Don't worry! I will be very brief, even though it is very tempting for me to present here many additional considerations. However, I will try to give very concrete answers and to only reply to those questions that were addressed to me.

*Original English*

Let me thank Mr. MacGuill for your remarks, your proposals and especially your encouragement. Of course, I will also take these proposals on board.

*Interpretation from German*

A few words on the issue concerning the financial sector, the tax system: I think we have to make a distinction in this context. This is, of course, a wide area, namely what you want to achieve by tax harmonisation, irrespective of whether you are in favour of or against it. I personally – and, of course, I do not represent the entire European Parliament, I am just one of more than 700 members, and I happen to have my personal view. I believe that it is necessary and appropriate to take steps in the direction of harmonisation in the field of taxes. However, you are, of course, right that this must go hand in hand with the appropriate, tough and efficient controls and adequate data protection. However, I do not believe that we should or ought to say that because “we have not yet obtained control” over data protection, we cannot take any further steps in other areas. I would actually see these issues differently. Especially if we strive for further harmonisation in such large, sensitive areas as taxes, this could actually create some major additional pressure on all responsible persons, including those responsible for data protection, namely to take all necessary steps in the field of data protection and not to block any action. I think these two approaches should be pursued in parallel and should supplement each other.

#### *Original English*

To our colleague from Norway: I will not be able to give you any satisfactory answer how the European Parliament regulates things like cyberspace and so on. These are huge things. It is the task of the Commission to come up with the necessary work and proposals. The European Parliament can certainly point out certain necessities and also the legislative process. It can see what additionally can be done. For instance, we have put forward our request to the European Commission in the course of our work on the data protection reform package, especially on the NSA hearings we had. It is necessary in the European Union to come up with concrete ideas, proposals for creating an EU cloud so that we Europeans are not dependent on – especially – US technology and US providers. So, it is up to the Commission to do whatever is necessary. May I repeat once again, and I really believe in this and I say this openly: The European Parliament has reached its capacities in many ways. We also have to re-think the way of working in the European Parliament. The additional competencies we have got must be followed and must be accompanied by the necessary means also to do the job. I have no delusion at all, the technological development is huge. It is very fast. We will never be able to regulate everything and certainly not perfectly. We would always be running after technological developments on that. But this does not mean that the package that we

have presented now, that we have finalised now, is not a good first step into the right direction.

Allow me also to point out another aspect. For me it is not only about regulating, as I said. It is my conviction that we will never be able to really regulate this sector in a truly satisfactory manner. The other aspect must be education and information. Educate, especially the younger generations, what it is about, what they are doing, when they are getting on to the Internet, when they are buying something at iTunes, and they do not know where, what they are doing when they are pushing and pressing the button and sending their personal data, what it is about. It is not only regulation, it is much more also about education, and it is much more about information.

And a last thing to our American colleagues: I shall be very brief, although this is, of course, a huge thing. When I spoke about the possible suspension of the free-trade agreement, believe me, I apologise when I am again referring to my previous job as foreign minister. I know about diplomatic sensitivities, I also know about the power relations you were referring to, no doubt. We have to preserve our relations to the United States. But your point that both the industry in the US and in Europe would be very upset about maybe a suspension of the negotiations (not the Free Trade Agreement but the negotiations for the Free Trade Agreement), I think that maybe this, if really industry would feel some pressure, they could exercise also the necessary pressure on politics to do whatever is necessary. Again, I would see in industry much more an ally, if used in the right way, than an enemy.

A last point and I apologise for saying this. I do not want to offend anybody but my conviction is: we must not sacrifice everything only for the sake of the economy. There are certain limits. We have fundamental rights here in Europe that we believe in, and I think it is up to us here in Europe to uphold and to stick to those fundamental rights.

*(Applause)*

I know that this is an invitation that I stop now. But allow me a very last sentence on that because I had this discussion with many colleagues from the US, also on a very high political level. My argument always is: You know, as a European citizen, I openly say that I felt deeply offended when I heard and read about things that everybody of us deep inside of us knows about. We are aware of it. But I felt deeply offended to hear and read about this. But I felt even more deeply offended when realising that the European Union, my countries, my governments, did not react at all. My question to every US counterpart is: How would you feel, how would you react if you were in the position of a European citizen in this matter?

***Stephen DREYFUSS, President, Union Internationale des Avocats:***

Let me just say – and that is what was a reaction in our country – that we felt – and again, I do not speak for America, I do not speak for my government, but there was a feeling expressed that it was not a lack of will on the part of the governments of Europe that caused them not to engage in the same conduct if, in fact, they did not engage in that conduct. It was a lack of means and resources. Therefore the question that should be asked by those of you – with all my respect – in Europe is that before, or at the same time as you criticise us for what we are doing, you look in your own backyard and ask what your governments are doing, and how different is it from what we are doing, before you criticise us.

***Mag. Dimitrios DROUTSAS, Member of the European Parliament and former Foreign Minister of Greece, Belgium:***

Crisis is always an opportunity to do the right things.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Does either of you need a lawyer?

So, I thank you for this lively discussion. The topic is very high on the agenda and a burning issue. We will continue to deal with it. We heard that the German lawyers will organise a conference on this topic in May. I am happy to hear that the CCBE will also take up this topic.

I would now like to invite our friends representing the legal professions to take the floor. Let us first hear those who travelled the greatest distance. This is Mr. Ricardo Rios Ferrer, President of the *Barra Mexicana*.

***Ricardo RIOS FERRER, President, Barra Mexicana, Mexico:***

Let me thank you, President Wolff, for inviting me to this most interesting and important meeting.

Ladies and Gentlemen, as President Elect of the Mexican Bar Association, I bring to you the best regards from my Mexican colleagues.

The situation in Mexico – briefly – is as follows: Mexico is currently re-shaping its overall regulatory landscape to strengthen the rule of law. Ground-breaking constitutional and legal reforms on fundamental rights such as courts' *ex officio* protection of fundamental rights, energy that has been opened to private and foreign investment, telecommunications that has

also been opened to foreign investments to a 100 per cent, anti-trust and soon the liberal professions, particularly the legal profession.

I am proud to tell you that on 10 September 2013 the United Nations awarded the Mexican Supreme Court of Justice a human rights prize due to its application of the Mexican Constitution and its obligations under international treaties that have set standards for Mexico and for the Latin American region.

With respect to the topic being discussed in this meeting, we just recently created a data protection agency that is independent from the three branches of government, with real enforcement powers. However, it will be confronted by recent national security exceptions and new money laundering laws that require full data disclosure by lawyers to enforcement agencies on qualified activities. So, this issue is also being presently debated in Mexican society. As lawyers we amount to about 4000 registered lawyers in Mexico, which is a country with 120 million inhabitants. In spite of that, bar membership is voluntary. This has in itself promoted the erosion of the rule of law because there is an enormous academic inconsistency. There is a severe lack of certification and updating of knowledge, a severe lack of ethical control and obviously widespread malpractice. Through the Mexican Bar Association we drafted a legislative package, which we recently submitted to the Mexican Senate, containing modifications to the Mexican Constitution and a new enabling statute that will require mandatory membership in professional associations, including bar associations. This will require as well a mandatory and regular certification through continuing legal education programmes every five years. In this particular case these controls will be enforced through each professional association. The Mexican Bar Association currently has about 10,000 members. But as soon as this legislation is passed, and we believe it will do so by the end of this year, we will probably have to deal with a mass application for membership that will reach, we estimate, somewhere about 100,000 lawyers.

In doing so, the Mexican Bar Association is moving forward, trying to implement best practices. We have learned from all the different bar associations and national bar associations with whom we have worked together closely. The document which we have prepared was nurtured by a deep and profound analysis of different systems throughout the world, particularly systems currently in place in Europe. Our association has 92 years of existence. It is the largest and most active bar association in Mexico. We have three main objectives: to defend lawyers, to control their professional conduct and to pursue the rule of law.

Finally, I want to extend to all of you a very cordial invitation to our national congress that we are jointly organising with the Mexican Supreme Court of Justice. Its subject is no other than fundamental rights, and it will take place from 6 to 8 November of this year in the city of Puebla (a two-hour drive from Mexico City).

Again, thank you very much for this invitation and sharing the floor with the Mexican Bar Association.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, President Rios Ferrer, for your report on the situation in Mexico. 400,000 lawyers in Mexico – this is a considerable number. The Austrian Bar will support you gladly in your efforts, on the one hand to obtain regulatory competences and powers and, on the other hand, to implement the necessary quality assurance measures that you have mentioned.

May I now ask President Aldo Bulgarelli to report on the situation of the CCBE!

***Aldo Bulgarelli, President, Council of Bars and Law Societies of Europe (CCBE):***

Thank you, Mr. President, to you and your national bar association for having organised also this year (it is a tradition) this hugely important “*Präsidentenkonferenz*” in this wonderful hall. It is a conference of presidents and so I have to speak as the president of the CCBE about the CCBE. The CCBE is based in Brussels. It is composed of 32 full members (EU and European Economic Area), three associated members and nine observer members.

What does the CCBE do? We are involved, interested in everything, about law and lawyers in Europe, but particularly focused on justice, fundamental rights and the rule of law. It is absolutely important in the light of what was discussed today.

We have two deliberative bodies. One is the plenary session, which meets twice per year and one is the Standing Committee. It meets approximately six times per year. Traditionally, our second Standing Committee per year is held in Vienna on the occasion of the “*Präsidentenkonferenz*”. We followed the tradition also this year.

But, of course, we do not only have the Standing Committee but the other committees to prepare the work of the Standing Committee and deliberate about the proposals. So, now we have had two days of intensive work of our Committee. We started on Wednesday. And just to have a flavour of what we do: We have a Finance Committee and the Presidency, but also



the International Legal Services Committee. We also spoke about the TTIP, the Transatlantic Investment Partnership. It is the trade agreement about which we spoke with a Member of Parliament. Because we are very interested in it, we are involved in that. Legal services are also very important for us and for our American friends. And then: the Insurance Working Group and the IT Law Committee. IT Law is exactly the main issue – thank you very much again for having chosen it for today. We have seen how important, how sensitive it is for lawyers but also for citizens. And then the Standing Committee yesterday: you will learn something about it later on. Yesterday after the Standing Committee we did not stop working. We had the PECO Committee. We had the honour to have your participation. I do not say what we have done there but we had, as special guests, representatives of Azerbaijan, Belarus and Kosovo. They are also here today. We also took an important decision, namely to continue the idea concerning Belgrade, i.e. to support the Serbian Bar Association in their effort to reach the goal of accessing Europe in the very difficult field of the *acquis communautaire*.

But we did not stop working because while we are working here there are two committees working at the same time, the Training Committee and the South-Eastern Europe Committee, again about this important region of Europe. But what about the Standing Committee? Because if we speak about what we dealt with, you understand what we do, what our work nowadays consists of. We have an important meeting about the European Transparency Register, about the role of lawyers as lobbyists because we also do lobbying as the CCBE. But some lawyers also do lobbying at European level. Then the evaluation of the lawyer's directive, you know very well how important these two directives are, Directive 77 on services and Directive 98 on establishment, how well they are working. We want to keep these special directives about the work of lawyers. It seems also the Commission agrees, but you never know. So, be prepared for possible changes and possible future negotiations on this issue. Again, access to justice. We analysed and discussed intensively and in an interesting way the proposal on European small claims procedure, about changing it.

I would like to introduce you to something interesting. You know very well but this should be underlined on this occasion, a big part of our work, it is not only in the interest of lawyers but also in the interest of citizens, who are our clients. So indirectly, as you were also told today, lawyers are intermediaries between citizens and the state.

And then criminal law. James went away now but he delivered a very good speech. He is the head of the Criminal Law Committee. He is going to do a titanic work to express the CCBE's

position on five new pieces of legislation, proposed by the European Commission in criminal law. Then, international legal services. I already spoke about the TTIP which is so important for the services between two states. I would like to say something about data protection and the relations between USA and Europe but I do not think I have the time to do it.

Then, the Permanent Delegation at the Strasbourg Court (PD-Stras). This is very important. We prepared a guideline for lawyers who defend before the Court of Human Rights. I anticipate, I cannot resist saying something. Our European reaction to what is happening is to use (It was already said by Patrick Henry) the judges. At the high level the European Court of Human Rights and the European Court of Justice. Don't forget we have the European Convention of Human Rights and the Charter of Nice, even stronger, defending the rights of citizens from the point of view of data protection.

It would be just as important to have another approach to the USA, not only about trade but also about human rights. It is sufficient that Europe and the USA recognise reciprocally their human rights and everything is solved. Because at the moment the problem is that the Americans can spy on Europeans because they are not Americans, and the very famous amendments of the Constitution do not apply to foreign people. But if we recognise reciprocally, you recognise the Charter of Nice and the Convention of Human Rights, and we recognise your Constitution, then the issue would be solved and judges can play their important role on that. What Stephen said is very true: States will never stop spying.. If you remember, our states protested fiercely because their politicians were spied on but what about us? Here, they want to continue spying. This is why the Council, Parliament and the Commission will continue to engage in efforts.

I will stop speaking about CCBE now. I already mentioned the PECO Committee: There we dealt with several important items. And then there is CSR, corporate social responsibility, another important issue that lawyers treat in their own interest, but above all that of their clients, the citizens.

European private law, again citizens are involved in the new Convention, i.e. the Hague Convention on the Choice of Court Agreements. It was also discussed by the judges.

#### *Interpretation from French*

On behalf of our delegation we intervened on the level of national courts and also of international courts. We are also prepared to take action in Belgium, if so required; this will be submitted to the European Court of Justice. I have obtained authorisation to do something

with France in defence of the core values of the lawyers' profession. And IT law once again: We deal with it at great length. We are very much interested in informatics.

I will end here because I have been told that it is very late already. So, thank you very much and I give the floor to the Chairman.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, President Bulgarelli, for this very interesting and informative outline of the work of the CCBE. I would like to ask you if a date has already been fixed for the European Lawyers' Day, which will deal with data protection.

***Aldo Bulgarelli, President, Council of Bars and Law Societies of Europe (CCBE):***

Yes, we are waiting for proposals from the bars. Yesterday we discussed this. We agreed that there should be a European Lawyers' Day. This is, of course, a very good idea that was proposed by Mr. Michel Benichou. Of course, he is the right man for this issue, and we will discuss this interesting idea.

We have prepared our manifesto in defence of the interests of our profession in four points. Two of the four items deal with data protection. This is why this conference is so important for us. Several copies of the manifesto are available on the table outside. Thank you.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you very much for this comment. I would now like to give the floor to Martin Solc, who will speak briefly on behalf of IBA about the forthcoming IBA conferences in Brussels and, in particular, the Bar Leaders' Meeting. This would definitely be of interest to our colleagues.

***Martin Solc, Secretary General, International Bar Association (IBA), England:***

Looking at the very long list of attendees and being aware that we have five minutes to go, I just promote both key events that the IBA is organising as many of you may be aware. The annual conference is taking place in October in Tokyo, and among the larger group I see many that regularly attend.

In Brussels, starting 21 May 2014 this year, there is a Bar Leaders' Conference followed, as usual, by the so-called "mid-year meeting" of the officers and committees of the IBA. Just a side remark: It was always called "spring meeting" but then in this highly politically correct world we had to acknowledge that we live in this zone on the other side of the planet. So, it is now mid-year. I think since the meeting is held in Brussels, it would be good if many of you decided to attend the Bar Leaders' Conference because travelling to other parts of the world is sometimes difficult, but this being in Europe, we would certainly be grateful to have a huge attendance by European bars. I will stop here.

***Dr. Rupert WOLFF, President, Austrian Bar, Austria:***

*Interpretation from German*

Thank you, Martin!

Ladies and Gentlemen, we have now come to the end of our extremely interesting European Presidents' Conference. Let me now make some organisational announcements. We will now walk to the Federal Chancellery. There, we will be received by the Chancellor, or his representative, Dr. Matzka. After that we will proceed to the reception by the Federal President Dr. Heinz Fischer at Hofburg Palace. The dinner tonight will take place in the Palais Pallavicini at 8 p.m. Those of you who will still be here on Saturday – let me inform you that we are all invited to a reception given by the Federal Minister of Justice, Dr. Brandstetter. It will take place at Palais Trautson which is the Federal Ministry of Justice. This will be on Saturday at 11.30 a.m. Last but not least, the Austrian Bar invites all participants to come to the *Juristenball*. We will offer you goulash soup at 1 a.m. on Sunday, i.e. 2 March 2014.

So, thank you very much! Thank you for your discipline but also for your interesting contributions. I do hope that I will be able to see you again in good health next year from 12 to 14 February 2015. I hope that we will be able to welcome you to Vienna once again for the 43<sup>rd</sup> Presidents' Conference.

Thank you very much.

*(End)*