



10 December

2014



**EUROPEAN
LAWYERS DAY**



ccbe.eu/lawyersday



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FOREWORD

1. Aldo Bulgarelli, President of the CCBE
2. Dr. Péter Homoki, Chair, CCBE IT Law Committee



Aldo Bulgarelli
2014 CCBE President

European Lawyers Day 2014 celebrates – through the activities of Bars and Law Societies at the European, national and local level – the common values of lawyers and their role in civil society in promoting the rule of law. When the CCBE planned this first Europe-wide Lawyers Day, we were conscious of the many issues currently facing European citizens. It seemed to us, however, that of all of the basic human rights that have been enshrined in the Universal Declaration of Human Rights and in the European Convention on Human Rights, the right to privacy and protection of personal information was the one most generally under threat through mass governmental surveillance as revealed over the past year. When rights are violated, citizens' faith in the administration of justice and the rule of law weakens. As lawyers, it is our role in society to uphold and defend the rule of law for citizens. Lawyer-client confidentiality and the protection of client data are key components of this role. Without trust and confidentiality, access to justice and the rule of law cannot be guaranteed.

This handbook is intended to assist you in your preparations for the first European Lawyers Day. You will find more materials on our website, www.ccbe.eu/lawyersday, including a section containing information on activities around Europe.

Please do not hesitate to contact us with any questions or comments. We look forward to following your events and to celebrating a memorable European Lawyers Day 2014!

Aldo Bulgarelli
2014 CCBE President



Dr. Peter Homoki
Chair of the IT Law Committee

With regard to mass governmental surveillance and the legal profession, there should be a harmonised, minimum level of protection for professional secrecy across all of Europe. This protection should not depend on whether the communication between the client and the lawyer is written on paper, in electronic form or is in transit - versus being stored somewhere. Whether information is stored at a lawyer's office, a telecommunications service provider or an IT service provider, such as a provider of cloud services, all such data, be it traffic data, metadata or content, should be afforded the same level of safety. If this minimum level of protection is not guaranteed, public trust in judicial procedures, and in the rule of law, will erode.

Péter Homoki
Chair of the IT Law Committee

EUROPEAN LAWYERS DAY

1. Purpose
2. Date
3. Background
4. Participants
5. Theme
6. Activities
7. World Human Rights Day
8. Resources
9. Contact





Purpose

To establish a national day throughout Europe that celebrates the rule of law and the legal profession's intrinsic role in its defence, including lawyer-client confidentiality and the protection of client data, as well as lawyers' common values and contribution to the justice system.

Date

The first **European Lawyers Day** will take place on **10 December 2014**, in conjunction with **World Human Rights Day** (see below).

Background

In 2014, the CCBE introduced the idea of coordinating an annual Europe-wide event that would encourage its member bars and law societies to organise national and local activities based around a central theme to promote the rule of law, and a lawyer's role in upholding its legal principles, to citizens.

Participants

It is intended that European Lawyers Day programmes and activities will be organised by national and local bars, or any person or group working with a national or local bar (bar members, courts, law schools and students, youth groups, and community organisations) that would like to educate the public on the crucial role of the rule of law and the legal process in protecting citizens' rights.

Theme

It is proposed that an annual theme will be chosen to illustrate how a specific aspect of law affects citizens and their rights. This year's theme of mass governmental surveillance includes the data mining of email correspondence, telephone calls, instant messaging software, cloud storage and other electronic communication methods that have been revealed to be intercepted by various governments around the world. This has a particular impact on the lawyer-client relationship, since trust and confidentiality lie at its heart. Following recent revelations, these crucial elements for access to justice, equality of arms and the rule of law can no longer be guaranteed.

Activities

Each member bar and law society is requested to encourage its members to organise events, publish educational material and/or conduct other programmes that promote citizens' awareness of the European Lawyers Day theme.

World Human Rights Day

In 1950, the United Nations (UN) General Assembly declared 10 December as 'Human Rights Day' to bring attention to the Universal Declaration of Human Rights (UDHR) as the common standard of achievement for all people and nations. In the aftermath of World War II, the General Assembly's adoption and proclamation of the UDHR on 10 December 1948 marked the first global enunciation of human rights.



Resources

An event poster, press releases, relevant position papers, and other related online research resources will be available on the CCBE's website: www.ccbe.eu/lawyersday.

Contact

Dawn Turek, Communications Officer for the CCBE, is available for any questions or comments that you may have regarding European Lawyers Day. She can be reached at turek@ccbe.eu.

DISCUSSION POINTS: MASS SURVEILLANCE

1. Suggested Talking Points
2. CCBE Resources
3. Other Resources





Last year's leaking of information about governmental surveillance programmes has shown that data protection rights are often protected only in theory rather than in practice. These revelations in the press by whistle-blowers and journalists, together with the expert evidence given during the [inquiry](#) of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE), admissions by authorities, and the lack of denial with respect to certain allegations, have resulted in compelling evidence of the existence of far-reaching, complex and highly technologically advanced systems designed by US and some Member States' intelligence services to collect, store and analyse communication data from citizens around the world which have been collected, stored and mined on an unprecedented scale, and in an indiscriminate and apparently non-suspicion-based manner. Though data-driven technologies may bring numerous benefits, they also create a number of specific new problems that have to be addressed, notably those concerning the legality of the interference with fundamental rights.

Such interference becomes particularly hazardous when the data and communications accessed by governments are those that have been granted special protection by the legislator. This is clearly the case in relation to communications between lawyers and their clients. In all EU Member States, the law protects from disclosure information communicated in confidence between lawyer and client. This principle – usually referred to as 'professional secrecy' or 'legal professional privilege' – has since long been recognised by the European Court of Justice in the AM&S case (case [C-155/79](#)).

What makes this debate really important to the CCBE is the threat of the exposure of professional secrets by indiscriminate, non-suspicion-based surveillance. Information that once would have been exchanged and afterwards kept in the lawyer's office, literally under lock and key, is being transmitted between lawyer and client by electronic means over the internet, and, increasingly, stored in the cloud. Such electronic data might, as it is transmitted by e-mail or stored, be literally anywhere in the world and vulnerable to being intercepted and read by not only the security agencies of the home state, but also foreign powers, whether "friendly" or not. This entails novel and unprecedented risks for the confidentiality, integrity and availability of the relevant communications.

Suggested talking points:

- Professional secrecy, the confidentiality of communications between lawyer and client, is an essential guarantee of a fair and impartial trial, supporting equality and allowing citizens and businesses to hold their government to account through the court system.
 - [A lawyer's client requires strict confidentiality](#) – and in all European countries this is an established right. The weakening of the confidentiality of lawyer-client communications erodes the trust of citizens and businesses in the rule of law, and in the ability of our democratic form of government to redress disputes and provide accountability.
 - [The CCBE has expressed its deep concern](#) that a core value of the profession, professional secrecy, known in some countries as legal professional privilege, is at serious risk, and erosion of this aspect of confidentiality will erode trust in the rule of law.
 - [The European Union and its Member States](#) have failed to address the above allegations in a satisfying manner with regard to the right to privacy enshrined by the [Charter of Fundamental Rights of the European Union](#) and the [1995 Data Protection Directive](#).
- For lawyers to be effective in defending their clients' rights, there must be confidence that communications between lawyers and their clients are kept confidential. In some jurisdictions in Europe, that is achieved by attaching to those communications the protection of legal professional privilege, and in other jurisdictions by treating them as professional secrets. Though there is some conceptual difference between these two approaches, and



some variation in precise practical outcomes from these two separate conceptual routes, broadly the end is the same: the protection of information contained within the relationship between lawyer and client. Without such protection, the very operation of the rule of law is undermined.

- As emphasised in the CCBE’s [position](#) on the proposed data protection reform package, law enforcement authorities’ obligations regarding the protection of personal data and any other data subject to professional secrecy should be at least as high as the protection expected from data controlling entities in the private sphere. This reinforces the need to have a single, comprehensive data protection regime.
- EU minimum standards for electronic surveillance should be established, including the need to place reasonable limits upon the invocation of national security as grounds to restrict the right to privacy. Such regulatory work should be based on reports and suggestions already made at regional and international level on this subject, for example the report by Frank La Rue, Special Rapporteur of the Human Rights Council of the United Nations ([see under this link](#)) or the draft report by a Committee of the Council of Europe Parliamentary Assembly, “Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight” ([see under this link](#)).
- The EU should work towards reinforcing the right to privacy at international level, e.g. based on optional protocols to Article 17 of the International Covenant on Civil and Political Rights, and by strengthening the level of protection guaranteed in practice by the safe harbour principles. As regards European countries outside the European Economic Area, within the framework of the on-going modernisation process of the convention, the EU should support adoption of more specific and detailed exceptions under Article 9 of Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data.
- Beyond all the necessary protection measures that can be achieved by political and legislative means, technical measures have to be taken as well to rebuild the trust in electronic communications and cloud services. Technical measures aimed at making Internet and cloud computing more secure and government access more subject to legal scrutiny, also have to take into account the specific requirements that have to be met in relation to information that is subject to professional secrecy obligations and legal professional privilege rules, like that between a lawyer and client. In other words, electronic communications and cloud services infrastructures have to be built where even technical functionalities guarantee that backdoors are not abused by governments or by third parties.
- The task of ensuring these requirements should be entrusted to a designated EU institution able to exercise control and issue opinions.
- Cloud computing has been at the top of the agenda of the CCBE for a number of years, both because of its many significant potential benefits, but also because of the above mentioned questions of data protection, professional obligations of confidentiality and other professional and regulatory obligations incumbent on lawyers. To this end, the CCBE adopted in 2012 a set of [guidelines](#) to make lawyers more mindful of the various risks associated with cloud computing and to assist them in making informed technology decisions. More recently, the CCBE also published a [Comparative Study on Governmental Surveillance of Lawyers’ Data in the Cloud](#).
- Cloud computing – issues relating to professional secrecy and data protection:
 - Lawyers’ responsibility might need to be clarified concerning the reliability and the safety of the Cloud on which they store their Clients’ data.



- Cloud computing might necessitate clarification of the extent to which lawyers need to obtain client's consent before using cloud-computing services to store or transmit confidential information.
- Data stored in a cloud computing environment might be susceptible to risks of unauthorised access either physically through unauthorised access to the premises in which the servers are located or electronically, either by the provider's employees or sub-contractors, or by outside parties, for example hackers, via the Internet.
- Main findings CCBE study on the extent to which, in different European jurisdictions, lawyers' electronic data is susceptible to governmental access, and the rules and conditions surrounding such access:
 - In principle, the regulatory regimes developed independently by all of the jurisdictions which have been surveyed in the study reflect the fundamental norm of professional secrecy in their respective rules applying to the conduct of searches and seizure of evidence in lawyers' premises. Whatever the diversity amongst such systems (and there is wide diversity) they all share this value as a common core.
 - However, the rules have not always kept up with changing technology. Therefore, in some (though by no means all) jurisdictions, data in electronic form held in the premises of an IT provider on behalf of a lawyer enjoys less protection than such data stored in the lawyer's own office. The CCBE study does not see any justification for such a distinction.
 - Secondly, insofar as the rules relating to the physical world of a lawyer's office are concerned, if there are special provisions that take into account, for example, the attendance of representatives of the lawyer's bar at searches of his office, then an analogous provision should be made for virtual searches.
 - In view of the above, the study concludes with the main principle that protections granted in the paper world should also be granted in the electronic world.
 - Moreover, although the study recognises that bringing wiretapping controls up to the standards of controls over physical searches would be a huge legislative task for each Member State, the regime put in place by Member States should guarantee the inviolability of data and other evidence falling under the principle of professional secrecy.

CCBE Resources

The CCBE has called upon the EU institutions to take steps to protect and enhance the confidentiality of private communications, as follows:

- [CCBE Response Consultation from the European Commission concerning Trusted Cloud Europe](#) (28 May 2014)
- [CCBE Comparative Study on Governmental Surveillance of Lawyers' Data in the Cloud](#) (4 April 2014)
- [CCBE Manifesto for the 2014 European Parliament Elections](#): End mass electronic surveillance of European citizens and their lawyers (14 February 2014)
- [Save the Rule of Law from Mass Surveillance](#), Ms. Judith Sargentini, Member of the European Parliament for the Dutch Green Party and Mr. Aldo Bulgarelli, President of the CCBE (6 February 2014)



- [CCBE Statement on mass electronic surveillance by government bodies \(including of European lawyers' data\)](#)
- CCBE Position Paper on the [Proposed Data Protection Reform](#) (7 September 2012)
- CCBE Press release, "[European lawyers call for action against surveillance of lawyer-client communications](#)" (18 October 2013)
- [CCBE Statement on mass electronic surveillance of by government bodies \(including of European Lawyers' data\)](#) (14 October 2013)
- "[Legal Regulation and Professional Secrecy in the Age of PRISM](#)", Interview with Dr. Péter Homoki, Chair of the CCBE Information Technology Law Committee (9 September 2013)
- [CCBE Statement on governmental practices involving mass data mining for the purpose of surveillance](#) (1 July 2013)
- [CCBE Position on the proposed data protection reform package COM\(2012\) 11 and COM\(2012\) 10](#) (7 September 2012)
- [CCBE Guidelines on the Use of Cloud Computing Services by Lawyers](#) (7 September 2012)

Other Resources

- [Charter of Fundamental Rights of the European Union](#)
- [Directive 95/46/EC](#): Establishes a regulatory framework which seeks to strike a balance between a high level of protection for the privacy of individuals and the free movement of personal data within the European Union (EU)
- Proposal for a [Directive of the European Parliament and of the Council](#) on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data
- [Report on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs \(2013/2188\(INI\)\)](#) (European Parliament, 21 February 2014)

COORDINATING YOUR EUROPEAN LAWYERS DAY EVENT

1. September
2. October
3. November
4. December
5. 10 December - The Day of the Event
6. Follow-up - After the Event





Below are suggested activities and a timetable for co-ordinating your event:

September:

- Establish an “European Lawyers Day Committee” and choose a Chair
- Audience: Decide what audience you want to reach (e.g., colleagues, adults, students, youth groups, organisations)
- Develop an Action Plan (goals, objectives, materials, activities, schedules, volunteers, and budget) to support the Mass Surveillance theme
- Consider adding a journalist to your European Lawyers Day Committee
- Identify and contact speakers, partners, local resources and sponsors

October:

- Convene the European Lawyers Day Committee for status reports on the Action Plan
- Coordinate volunteers with specific activities within the Action Plan
- Confirm funding sources to support your Action Plan
- Arrange for a photographer to cover events and activities
- Compile and/or update list of media contacts
- Send a press release to your media contacts announcing the event
- Add event to community calendars in local media
- Send out an announcement, reminders, and event updates via social media
- Submit articles and letters for news publication (in November or December)
- Implement publicity/media
- Go to www.ccbe.eu/lawyersday to register your event with the CCBE

November:

- Convene European Lawyers Day Committee for status reports on Action Plan
- Finalise coordination of volunteers to support programmes and activities
- Finalise arrangements for a photographer to cover events and activities
- Finalise media / publicity arrangements
- Finalise funding sources
- Prepare feedback forms for attendees
- Invite journalists to participate in or at least attend the event
- Visit www.ccbe.eu/lawyersday to see and share ideas for European Lawyers Day



December:

- Convene European Lawyers Day Committee for final review of all aspects of European Lawyers Day celebrations
- Follow up with reporters a week before the event to encourage attendance and pre-event coverage

10 December - The Day of the Event:

- Contact local media one last time to provide a reminder of the day's event and offer any additional information that may be needed
- Have a greeter welcome representatives of the media who attend your event
- Introduce your spokesperson to the media representatives for interviews
- Enjoy European Lawyers Day!

Follow up: After the Event

- Follow up with media contacts
- Send a post-event press release with information about the event, including how many people attended, what of interest transpired, and the name of a media contact, as well as photographs of the event, to everyone on your media contact list
- Collect clippings from and take note of the coverage your event receives so that you can later document its success for your various constituencies
- Send a thank-you note to all journalists who attended, whether or not they write a story
- Keep a file of what strategies worked and what did not to refine your media outreach for next year's European Lawyers Day
- Collect feedback forms to enhance next year's events

ACTIVITIES AND PROGRAMME SUGGESTIONS

1. The Government
2. The Legal Community
3. The General Public





European Lawyers Day is an excellent opportunity to engage a variety of audiences in interactive discussions about mass surveillance, the right to lawyer-client confidentiality and the rule of law. Potential programme ideas are outlined below, but include holding events, inviting speakers, and engaging with the local community.

The CCBE offers the following programme suggestions:

The Government

European Lawyers Day offers the perfect opportunity for your Bar or Law Society to raise concerns about the impact of mass surveillance on the rule of law with your Government itself. A co-ordinated programme of lobbying of government ministers, officials and members of Parliament on the day will raise the topic's profile.

The Legal Community

Outreach by lawyer volunteers outside of the Bar or Law Society on the Day's theme of mass surveillance could include talks to law students at university, or to senior school students.

Ask-a-Lawyer

- Allow members of the community to ask questions of legal professionals about the European Lawyers Day theme, lawyer-client confidentiality, the legal process or possible legal issues that they may be encountering
- Encourage your members and audience to contribute to the [CCBE Twitter discussion](#) using [#clientdata](#) and [@CCBEinfo](#)
- Conduct an online chat, such as via Facebook or Twitter. Set a time, publicise, and sharing your legal expertise
- Participate in radio or television programmes

Online or Newspaper Articles

Write an article, a blog post or a 'Letter to the Editor' to bring focus to European Lawyers Day, the theme of governmental mass surveillance and the threat to lawyer-client confidentiality and the rule of law

Informational Event

Share information about mass surveillance, lawyer-client confidentiality, and the rule of law, as well as other important legal knowledge, such as how courts work, what courts do, and locating lawyers

An informational event could be held at locations such as government offices, conference or community centres, universities, or libraries

Speaker Presentation

Examples include public dialogue, a topical lecture, a debate on a mass surveillance and the rule of law, or a moderated panel discussion



Awards and Recognition

European Lawyers Day is an excellent opportunity to bring awareness to the special accomplishments of advocates in defence of human rights or other important contributions to the field of law.

The General Public

Public Debate

European Lawyers Day is an opportunity to raise awareness, have conversations, or explore issues related to mass surveillance and the law. Look for opportunities to hold events that encourage a lively exchange of ideas.

PUBLICISING YOUR EVENT





Publicising your European Lawyers Day events and activities is a key component of making them successful.

Here are some ideas to call attention to European Lawyers Day events:

Send Out Press Releases

- The CCBE will be providing an official [European Lawyers Day Press Release](#) to all of our members for their use and distribution.

Write Letters to the Editor

- A brief, concise letter to the editor or a topical article is an excellent way to reach newspaper readers. You can use this space to discuss the European Lawyers Day theme or the importance of European Lawyers Day.

Submit Articles for Publication

- See “[CCBE Resources](#)” on pages 10 and 11 for interviews conducted on mass surveillance and professional secrecy as well as position papers and press releases that member bars may use in their press coverage / communication of the event.

Address Local Groups

- Contact the organizers of upcoming meetings of community groups (e.g., school boards) and ask to be allotted time on the agenda to briefly discuss European Lawyers Day. If this is not feasible, ask the organizer if he/she would be willing to make an announcement about your event if you provide him/her with the copy.

Use Social Media

- Get the word out: Facebook, Twitter, and LinkedIn all provide excellent opportunities to advertise an event. For your Tweets, use the hashtag #clientdata to give visibility among others looking for European Lawyers Day-related communications. Link to a page with more detailed information about your event.
- Don't forget to notify the CCBE Communications Officer ([Dawn Turek](#)) so that your event or activity can be posted on the European Lawyers Day website: www.ccbe.eu/lawyersday

POST-EUROPEAN LAWYERS DAY CHECKLIST





- Meet with your European Lawyers Day Committee to assess activities and feedback
- Send feedback report to the CCBE
- Submit photos of your event and activities to the Communications Officer of the CCBE ([Dawn Turek](#)) for use in our materials publicising European Lawyers Day

