

## Brainhack opening talk

Distinguished guests, good morning.

I have been asked, as Dean of the Faculty of Laws, to deliver a welcoming speech for this occasion. I feel honoured at the invite and at the opportunity to welcome you today.

I have to state outright that I am not in a position to contribute much to the discussion by way of knowledge and experience, the real experts are coming after me, not least Professor Dan Svantesson who will be delivering his keynote speech, which I for one am truly looking forward to.

On the other hand, the Rule of Law comes to my mind loud and clear, when I think about Brainhack workshop you will be participating in today and tomorrow. As you all know, the Rule of Law is a very basic and fundamental principle, this being that legislation is passed for the good of society, nobody is above it, and it is to be applied fairly. Laws must be just, fair and altruistic, and must have the wellbeing of the individual at heart.

I am a firm believer in science, in research and development, in innovation. Europe, together with the USA, have traditionally been the cradle of innovation. All major developments emerged from Europe and the USA. Think Nicola Tesla and AC current, aviation (Wright Brothers in the USA), the first motor car (Daimler in Germany), Thomas Edison and the light bulb, Graham Bell and the telephone, and without making any adverts, ASML in the Netherlands and semiconductors. This is just some examples; then unfortunately because of globalisation the technology gradually migrates to other parts of the world, and these 'other parts of the world' (without pinpointing any particular countries) perfect the technology, and sell it back to us even bankrupting some of our companies in the process. Take solar panels for example and electric cars. White goods, lightbulbs all coming from one particular country and sold back to us at bargain prices.

What to do about it? Raise tariffs? Carve up the world (as I suspect is happening) and carve up markets so that each protects their own turf? This is nonsense, it does not work. The answer is to continue innovating and that way remaining ahead: by the time your 'discoveries' are emulated, you have moved on to the next bigger thing!

Continue investing in education, in science and technology, in encouraging people to dare, to risk, to think big, and if necessary fail too because it's part of the process and it is better to have aimed high and lost than not tried at all. So, I am pro-science and innovation and I believe that the answer for Europe, the way to keep up, is by making sure that we are ahead in research and development; it is a shifting goalpost and others are trying to crack this, so we must make sure that we forge ahead and leave the competition behind.

**However** – and there is a however, obviously, otherwise you would not be here today to discuss the relationship between science and law, the balance between the two, and how to create and preserve and further science based on good law. Science, research and innovation are essentially about improving peoples' lives. The economy is important, cutting edge technology in all areas is crucial if we are survive and stay ahead, but at the centre of it all is the human being, human dignity and human rights. This is where GDPR comes into play: it is the means how to preserve this delicate balance between the evident requirements and enthusiasm of the scientific community, to do what it takes to further research, because they correctly believe in the utility of their work, and the obligation imposed on one and all, to respect the rule of law! That is what we are ultimately talking about: science and innovation are simply not permitted at any cost, so no matter how useful the data you gather from your MRI (to mention one example) its use and sharing is subject to certain controls, which controls are aimed at protecting the individual against that big, powerful, somewhat 'mean machine' which if left unchecked will keep on going and will ride roughshod over us.

The question is, where to strike a balance between the various needs and interests. We have to make sure that laws are not so stringent as to stifle progress; we have to nurture and foster research and development, laws must be interpreted and applied in a realistic, reasonable manner, which strikes a fair balance between the rights of the individual, the dignity and privacy which the law strives to protect, and yes, the needs of science.

We have to remember, and keep in mind, that rights are not absolute and somewhere, for good cause, there has to be a trade off. It is through compromise that things keep moving. This is a stark reality, without which the world would simply grind to a halt e.g. prohibiting sharing of medical information, in the interest of privacy, or making this subject to the satisfaction of such formalities that in practice you are simply stifling it! This is simply not on.

We also have to protect against abuse. Unfortunately the GDPR legislation, in the wrong hands, can indeed lead to such abuse, just like the previous data protection legislation did too. For example I have come across cases where people or entities normally government departments, hid behind the excuse that something cannot be done because of 'data protection'! What a farce.

Nor are scientists expected to spend an inordinate amount of time sorting out the red tape, when they could spend that time doing what they are supposed to be doing i.e. dedicate themselves to innovation, instead of spending an inordinate amount of time on regulation and satisfying bureaucratic requirements. This risk has to be mitigated too, not least by those entrusted with implementing and enforcing GDPR regulation. We have to all be pragmatic, not 'holier than thou' (bluntly put).

That is what the Rule of Law is about; as I already stated no position is absolute and the different needs and interests must be merged in a way which works for most people, most of the time, in a reasonable manner. It is the same with GDPR as one of the many 'children' if you like of the Rule of

Law, let's not be scared stiff of this phenomenon which has now been around for quite a few years: it is well meaning and rightly intended to protect the individual to retain their dignity and pride. Yet extremes are bad, extremes do not benefit anyone and everybody loses out when a balance is not found between the various positions and conflicting interests.

So, my appeal to the regulators and the lawyers; keep in mind our ultimate goal, this being the need to find an equitable mean; do not stifle innovation, research and technology, because if you do, it will simply migrate to another part of the world where laws are less stringent and our continent will be all the poorer for it (poorer not just in monetary terms but also in terms of cutting edge ideas); on the other hand, we should not scrap the laws and sacrifice everything and everyone in the name of innovation, because otherwise we will not be living in the civilised society we pride Europe and the West to be. Reason must prevail, and ethics too; the lawmaker must not be too stringent and rigid, but on the other hand the scientists must bear with the lawyers and regulators and work within the restrictions, the limits, the ethical rules and legal obligations imposed on them, for the greater good of the individual who at the end of the day we all owe a Duty of Care towards, each in our own way.

Thank you.

Ivan Mifsud

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*Opening talk delivered at Valletta Campus, University of Malta, at a Brainhack GDPR workshop organised (mainly) by the [Protection of Data in Medical Research \(PADME\)](#) team.*