Ladies and Gentlemen,

Confident that I am not only speaking on behalf of myself - I would first like to express my gratitude for the very warm reception which we have enjoyed in one of the newer and in the meantime most integrated of Member States, Estonia – the colours of which I am proud to wear today.
I thank the hosts for such a perfectly and efficiently organized conference: Julia Lafranque and her team of whom, for their work working group 1 I mention especially Marika Linntam, Merli Vahar.
You have much facilitated the work of the conference and working groups of the FIDE.
The FIDE, like the national associations for European law of which we are all members, forms a unique meeting place for scholars, practitioners and members of the European institutions, to discuss and reflect on main issues of European integration – a uniqueness which should never be given up.

I take the opportunity to praise one novelty introduced by the Tallinn Conference, which may have escaped the attention of most participants. That is the conference organized by the students here in Tallinn, immediately prior to the FIDE conference, which has provided a forum for involving students and the youngest generation of European lawyers. I hope this sets a precedent for future FIDE conferences.

It turn to the work in Working group no 1, which concerned the topic of 'The Protection of Fundamental Rights Post-Lisbon: the Interaction between the Charter of Fundamental Rights of the EU, the European Convention of Human Rights and National Constitutions'.

The discussions were informed by the large number of national reports, each and together providing a very rich panorama of the theme and topic. The discussions were equally rich and informative.
So much so, that when I report on results of the working group, inevitably I present a highly personal selection of only few remarks and of only few of the insights which they brought me.
As I do not want to detain you longer than strictly necessary, I apologize in advance for leaving out very important issues we discussed in our meetings.

For the purpose of the discussion the topic was divided into 4 parts.

1. "Fundamental rights protection on EU and national level"

2. "EU Charter of Fundamental Rights and consequences of its entry into force"

3. "Managing a Twin Peak system: consequences of the Accession of the EU to the ECHR"

4. “The European area of fundamental rights” (an expression borrowed from Commissioner Vivian Reding)

This last theme as well as the first theme are no doubt the broadest.

The fundamental rights protected at national level comprise, after all, at least

- the EU fundamental rights,
- the ECHR fundamental rights,
- other international human rights instruments with internal effect in the MS,
- and last but not least national constitutional rights which are essential for MS being democratic states under the rule of law as they unite in the European Union – as was pointed out by Vice-Président du Conseil d’Etat, Jean-Marc Sauvé in his introduction to our first working group session.

It is evident that between these various co-existing sources of protection, there is a dynamic of overall convergence, as already was clear in the national reports.
This convergence is not self-evidently in the same direction, though.
Some member states seek for a higher degree of protection outside their autonomous sources and national traditions.
In other member states the multiplicity of sources may provide what is conceived of as a lowering of standards.
An example mentioned in the British report and asserted in one of the discussions, is the divergence in scope and meaning of at least three versions of the principle of *‘ne bis in idem’* as they present themselves in British legal systems as a consequence of the co-existence of the European legal regimes next to the national regimes. So frictions arise and are possible.

2. The Charter
Two quite informative introductory opening speeches were held by the European Ombudsman, Diamandouros and the by Paul Nemitz of the Commission; they helpfully fed into the discussions.
Discussions on the Charter started off with the question preceding all other questions: that of the Scope of the Charter and the Scope of EU law.
There is an obvious tension between on the one hand the fear of MS of an encroaching of EU beyond what they consider its appropriate domain, and on the other hand the need to subject the exercise of public authority under EU law to the discipline of respect for fundamental rights of citizens.
The MS governments’ fears have resulted in texts on the scope of the Charter which have given rise to uncertainties and ambiguities, which focus on the extent to which MS action is subject to the rights of the Charter.
These have been explored in the various reports and were the object of discussions in our working group.
The Commission is highly aware of the sensitivities of MS governments and steers a subtle course in terms of its action and policies, e.g. in infringement proceedings concerning fundamental rights.
A subtle distinction was also made between the scope of the Charter and the scope of EU law, which was so subtle that the *rapporteur général* had some

difficulty with it. Consensus, however, emerged on the fact that the relevance of the various Charter rights to MS action depends on the kind and scope of competence of the EU. Also, there is agreement that when for instance the TFEU grants the power to the EU to legislate on data protection in the MS, the EU legislature is bound not only to the safeguards contained in the TFEU provision granting that competence, but also to the stricter conditions imposed by Art. 8 of the Charter.

Another line in the discussions concerned the incremental case law of the Court of Justice on the scope of EU law. This case law more and more openly not only *assumes*, but *points out to* the referring courts the existence of plural sources of fundamental rights protection beyond the scope of EU law, which are relevant to resolving the cases which the referring courts have to decide, witness notably *Derici*.
The Court, in other words, shows awareness of the broader area of fundamental rights in Europe, beyond EU law itself. I personally think that this is a good thing.
Divergent opinions exist of course on the desirability of various lines of case law on the matter.
Again personally I think it is not necessarily a bad thing that the ECJ is not a doctrinal court. It is in this respect unlike the self-understanding of some national constitutional courts, and hence it primarily decides on the basis of referred questions on a case by case basis. Although this does not make life for the court watchers easier, we court watchers would not have much to do if the Court would decide by single doctrinal standards which will decide all future cases definitively.

3. Accession to the ECHR
The organizers and national *rapporteurs* had not foreseen the relative stalemate in the negotiations because of disagreement about the draft Accession Agreement on which agreement had been reached in June 2011. The stalemate became apparent in the autumn; while the national reports had been handed in around the 1 October that year.
Consequently, some attention was paid to the process of accession. Luckily, a brief overview of the state of play by Clemens Ladenburger in our session showed that there is progress, and we may expect negotiations to resume with the CoE on a further compromise text, that is to say, a compromise between the EU Member States on the text to be negotiated with the non-EU state parties to the ECHR.

The opinions on whether to accede or not to accede veered between two opposed approaches.

One *rapporteur* expressed his doubts as to whether the accession of the ‘slightly dysfunctional’ system of the EU to the ‘totally dysfunctional’ system of Strasbourg really provides a solution to the protection of the rights in the service of ordinary citizens.
In the discussion – as in the literature – the other pole is that of the ‘unique’ regional system of the EU to another ‘unique system’ of human rights protection.

In this light the merits were discussed of the uniquely complicated devices of the so-called 'co-respondent mechanism' and the more controversial 'prior involvement mechanism'.
One surprise is that the discussion showed that not everyone was equally aware of the fact that the latter has been rather controversial ever since the first launch of the idea of accession, which was at the end of the 1970s – I remember in this context a conference organized by the Commission in 1980 at the Isola San Giorgio in Venice, which I attended as a student of Paolo Mengozzi (now Advocate General at the Court), in which both the principle and the technical form then proposed received criticism.
As a staunch supporter of accession, I am extremely curious to see how these complicated procedures may be streamlined in the necessary internal EU rules so as to achieve some simplicity in the guarantees for applicants seeking protection of their rights in the Strasbourg Court.

4.[1] Europe comprises an area of fundamental rights.
Their protection is not the monopoly of any single court.
On the part of the EU this is acknowledged for instance in the recent judgement of the ECJ in Kamberaj of 24 April of this year, in which a very important qualification of the Simmenthal doctrine has occurred, deferring to national constitutional courts' specific role in the disapplication of national law in relevant jurisdictions, when it comes to the application of the ECHR as part of the general principles of Union law in the sense of Art. 6(3) EU Treaty.

The protection of fundamental rights in the European area is not the monopoly of single courts.
On the part of major national constitutional courts this has been acknowledged as to the ECHR and the ECtHR. Nearly all of them give the ECHR in its interpretation by the Strasbourg court a role of particular importance in the interpretation of national constitutional rights.
As regards the EU, const courts' judgments like that of the BVerfG in *Honeywell* and in essentially the same manner by the Polish constitutional court in its highly acclaimed judgment of 19 November last year, testify to the same.
The case law of the ECtHR has abundantly acknowledged the importance of other fundamental rights sources and authoritive interpretations thereof outside its own system.
The same is of course the case for the case law of the ECJ and General Court.

Europe comprises an area of fundamental rights.
Their protection is not the monopoly of any single court, nor of single legislatures, single executive entities or agencies.
This is the reality created by European integration. But this is also the reality of the era of globalization, even if we would leave aside the specificity of integration within the EU.

[1] Overstretch of fundamental rights; how ECHR may either upset EU systems based on mutual recognition (Ladenburger thinks that accession offers the opportunity for explaining the matter to the ECtHR in a manner which is impossible now).

In this reality, the various regimes of fundamental rights protection are complementary.
The dispersion of rights protection across levels, contexts, regimes and jurisdictions requires also due observance of the principle of subsidiarity.

All this gives rise to complexities which it is our duty as European lawyers to clarify, so that not only we, but primarily the citizens for which fundamental rights exist, are not lost in this complexity.

Mr Chairman, ladies and gentlemen,
The discussions in our working group have provided me very much food for thought. I extend my gratitude for this to

- the national rapporteurs for their rich contributions,
- the interveners in the debates for their valuable input,
- the moderators of the discussion to channell all this into orderly discussions,
- and not least my co-rapporteur Clemens Ladenburger for his extremely important input in the form of his report and his input in the debates – our discussions could not possibly have been as fruitful without his contribution.

Thank you.