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# PRESS RELEASE

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## Important French court decision supports lawyers on money laundering reporting

The Council of Bars and Law Societies of Europe (CCBE), representing more than 700,000 European lawyers through its member bars and law societies of the European Union and the European Economic Area, has welcomed with great satisfaction the decision given today by the French *Conseil d'Etat* - the highest administrative court in France - regarding the challenges mounted by the French Bar and the CCBE against the implementation of the second money-laundering directive in France<sup>1</sup>.

The *Conseil d'Etat* complements in harmony the recent case law from the decision of 26 June 2007 of the European Court of Justice<sup>2</sup> and from the decision of 23 January 2008 of the Belgian Constitutional Court<sup>3</sup>, by ruling that the EU Member States do not have just the option to respect lawyers' professional secrecy within the framework of judicial activities and legal advice, as mentioned in the Directive, but are under an obligation to do so. By referring to Article 8 of the European Convention on Human Rights, the *Conseil d'Etat* gives the widest meaning to legal advice, leaving to one side the expression of 'ascertaining of the legal position of a client' mentioned in article 6 of the Directive

The *Conseil d'Etat* also states that, in order to safeguard professional secrecy, all direct contacts between the lawyer and the national financial intelligence unit should be forbidden, and it highlights the role of the bar president in this respect.

The decision of the *Conseil d'Etat* and the decision of the Belgian Constitutional Court are framed with reference to Community law. The CCBE welcomes the fact that national judges from different Member States apply, in perfect harmony between them, the laws coming from the treaties, and that every decision given on the regulation of the prevention of the use of the financial system for the purpose of money laundering, is inspired by respect for fundamental rights, which the CCBE highlighted in vain in two petitions submitted to the European Parliament.

CCBE President, Péter Köves, said today: "This decision, as well as the recent decisions given by the European Court of Justice and the Belgian Constitutional Court, are a very firm warning. It is not possible to impose on the European legal order an obligation on lawyers to betray the trust of their clients, nor to impose on them obligations other than those of guarding with independence the interest of their clients alone.

At a time when the 3<sup>rd</sup> Money Laundering Directive of 26 October 2005, which increases the information and cooperation duties on lawyers, is about to be implemented, the Member States have the compelling need to take account of respect for fundamental rights as unanimously called for by the European Court of Justice in its decision of 26 June 2007, by the Belgian Constitutional Court in its decision on 23 January 2008 and now by the Conseil d'Etat in its decision of 10 April 2008."

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<sup>1</sup> Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

<sup>2</sup> Judgment of the Court (Grand Chamber) of 26 June 2007 (reference for a preliminary ruling from the Cour constitutionnelle (formerly Cour d'arbitrage) (Belgium)) — Ordre des barreaux francophones and germanophone, Ordre français des avocats du barreau de Bruxelles, Ordre des barreaux flamands, Ordre néerlandais des avocats du barreau de Bruxelles v Conseil des Ministres (Case C-305/05).

<sup>3</sup> Judgement of the Belgian Constitutional Court of 23 January 2008 in joined cases 3064 and 3065.