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PRESS RELEASE

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CCBE is disappointed by the decision of the Court of Justice on lawyers' reporting obligations

The Council of Bars and Law Societies of Europe (CCBE), representing over 700,000 lawyers from the European Union and European Economic Area through their member bars and law societies, is disappointed by the decision of the European Court of Justice in the challenge by the Belgian Bars against the reporting obligations on lawyers imposed by the 2001 money laundering Directive [case C-305/05 with regard to Directive 2001/97/EC].

In 2004, the Belgian Bars challenged the implementation of those provisions of the 2001 Money Laundering Directive which imposed for the first time reporting obligations on lawyers in Belgium. The CCBE intervened in support of the Belgian Bars' contention that the reporting obligations were an unjustified infringement of the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights. In its judgment, the Court decided that the reporting obligation imposed on lawyers participating in financial transactions with no link to judicial proceedings did not breach the right to a fair trial.

The CCBE intervened as it believes that the introduction of reporting obligations (previously confined to financial institutions) on lawyers, who are members of a regulated profession, will breach Article 6 as it compromises the independence of lawyers, and will lead to the irrevocable violation of the principle of client confidentiality. Access to legal advice will be jeopardised, and subsequent defence cannot be guaranteed, if the necessary confidence of a client in his or her lawyer will be betrayed by the obligation imposed on lawyers to report their suspicions to state authorities.

The CCBE has never accepted that lawyers, who are members of a regulated profession, should have been included in the scope of the reporting obligation. The CCBE has consistently requested that the Commission and the Financial Action Task Force on Money Laundering (FATF) provide evidence that lawyers are being unwittingly used to facilitate money laundering activities which would justify reporting obligations being imposed on them. Such evidence has never been provided by either the Commission or the FATF. The CCBE does not and never will condone the actions of any lawyer who knowingly participates in the criminal activity of a client, whether relating to money laundering or anything else. But there are already professional ethical rules and disciplinary sanctions, in addition to criminal sanctions, in place to deal with lawyers who participate in such criminal activity.

CCBE President, Colin Tyre QC, said today: "I am disappointed by the ruling of the Court, as it has given a narrow interpretation to the scope of the right to a fair trial and has left a number of other issues concerning fundamental rights unanswered. I also believe that the Court's division of legal activities into judicial proceedings (which will be exempt from the scope of the directive) and other activities in which legal advice may be given (which will not be exempt) is unworkable in practice, since few clients will present their problems in such a clear-cut way. Once the lawyer has reported any suspicion, it will be impossible to go back on that report if the transaction becomes the subject of judicial proceedings."

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