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**Response from the Council of the Bars and Law Societies of the
European Union (CCBE) to the Home Office Consultation on The
Proceeds of Crime Act 2002
&
The Money Laundering Regulations 2003:
Obligations of Accountants to Report Money Laundering**

September 2004

Response from the Council of the Bars and Law Societies of the European Union (CCBE) to the Home Office Consultation on The Proceeds of Crime Act 2002 & The Money Laundering Regulations 2003: Obligations of Accountants to Report Money Laundering

1. The Council of the Bars and Law Societies of the European Union (CCBE), which through its member Bars represents more than 700,000 European lawyers, wishes to respond to the Home Office consultation on "The Proceeds of Crime Act 2002 & The Money Laundering Regulations 2003: Obligations of Accountants to Report Money Laundering".
2. Due to the fact that the consultation is concerned with national legislation, the CCBE, which is responsible for issues at a European level, does not wish to respond to the specific questions contained in the consultation paper. The chief issue in the consultation is whether the defence currently available in certain circumstances to the legal profession in respect of the obligation to report money laundering should be extended to the accountancy profession, particularly when they are providing comparable services. As a result, this response explains the reasons why legal professional privilege is and should remain unique to the legal profession.
3. Legal professional privilege arises out of the specific nature of the legal profession. In all Member States of the European Union, the law protects from disclosure information communicated in confidence to a lawyer by his client. The Member States differ in the methods by which this protection is achieved. In some States, legal duties are expressly imposed upon the lawyer and corresponding rights are expressly conferred. In other States, protection is achieved by the creation of "privileges" or exemptions from the ordinary rules of law. The nature and extent of these rights, duties, privileges and exemptions, vary from State to State. By whatever means protection is achieved, and whatever its nature and extent, its purpose is the same in all states.
4. This purpose is not to protect the individual lawyer or the individual client. The purpose is, first, to protect every person who requires the advice and assistance of a lawyer in order to vindicate his or her rights and liberty and, second, to ensure the fair and proper administration of justice. This cannot be achieved unless the relationship between the lawyer and client is a relationship of confidence. The rights, duties and privileges given to lawyers are, therefore, an essential element in the protection of individual liberty in a free society. They exist for the public interest; they have not been created by lawyers for their private benefit.
5. In most Member States, the law also protects from disclosure information communicated to other persons, such as doctors. But lawyers are the only category of private professional persons upon whom such rights, duties and privileges are conferred without exception in all the Member States. These rights, duties and privileges are therefore, not only an essential feature of a free society, but also an essential mark of distinction between those who are properly qualified lawyers and those who are not.
6. There is an essential difference between the role of a lawyer and that of an accountant, and this has been recognised at European level. In the case of *Wouters* [Case C-309/99], the European Court of Justice had to consider whether the Dutch Bar had breached European competition law in refusing to allow partnerships between lawyers and accountants. This is what the Court had to say about the respective role of lawyers and accountants:

“104. As the Advocate General has rightly pointed out in paragraphs 185 and 186 of his Opinion, there may be a degree of incompatibility between the 'advisory activities carried out by a member of the Bar and the 'supervisory activities carried out by an accountant. The written observations submitted by the respondent in the main proceedings show that accountants in the Netherlands perform a task of certification of accounts. They undertake an objective examination and audit of their clients' accounts, so as to be able to impart to interested third parties their personal opinion concerning the reliability of those accounts. It follows that in the Member State concerned accountants are not bound by a rule of professional secrecy comparable to that of members of the Bar, unlike the position under German law, for example.

105. The aim of the 1993 Regulation is therefore to ensure that, in the Member State concerned, the rules of professional conduct for members of the Bar are complied with, having regard to the prevailing perceptions of the profession in that State. The Bar of the Netherlands was entitled to consider that members of the Bar might no longer be in a position to advise and represent their clients independently and in the observance of strict professional secrecy if they belonged to an organisation which is also responsible for producing an account of the financial results of the transactions in respect of which their services were called upon and for certifying those accounts.

106. Moreover, the concurrent pursuit of the activities of statutory auditor and of adviser, in particular legal adviser, also raises questions within the accountancy profession itself, as may be seen from the Commission Green Paper 1996/321/01 'The role, the position and the liability of the statutory auditor within the European Union (OJ 1996 C 321, p. 1; see, in particular, paragraphs 4.12 to 4.14).

107. A regulation such as the 1993 Regulation could therefore reasonably be considered to be necessary in order to ensure the proper practice of the legal profession, as it is organised in the Member State concerned.

108. Furthermore, the fact that different rules may be applicable in another Member State does not mean that the rules in force in the former State are incompatible with Community law (see, to that effect, Case C-108/96 Mac Quen and Others [2001] ECR I-837, paragraph 33). Even if multi-disciplinary partnerships of lawyers and accountants are allowed in some Member States, the Bar of the Netherlands is entitled to consider that the objectives pursued by the 1993 Regulation cannot, having regard in particular to the legal regimes by which members of the Bar and accountants are respectively governed in the Netherlands, be attained by less restrictive means (see, to that effect, with regard to a law reserving judicial debt-recovery activity to lawyers, Reisebüro, paragraph 41).

7. The conclusion to be drawn from this case is that lawyers and accountants have quite different roles in society, and that this is recognised at European level by the European Court of Justice. In some Member States, they might be subject to the same ethical rules, specifically as a result of local laws. But there should not be any automatic granting of equivalent status in confidentiality matters to the two professions without careful consideration of their social roles, and the effect of giving legal professional privilege to accountants. In general, because of their different roles, the CCBE is opposed to the dilution of the principle of legal professional privilege by granting it to a profession one of whose main roles, as described by the European Court of Justice above, consists in imparting information to interested third parties, as opposed to keeping it strictly confidential.

8. The CCBE urges the Home Office to take these issues into account in its decision-making.

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