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Brussels, 30 January 2009

**RE: Commission consultation on hedge funds**

Dear Madam/Sir,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE) which represents more than 700,000 European lawyers through its member bars and law societies of the European Union and European Economic Area.

I refer to the European Commission's recent consultation paper on hedge funds which was published on 18 December 2008.

The CCBE welcomes the European Commission's efforts in tackling the recent financial crisis.

The CCBE is concerned, however, that the efforts do not take account of the special lawyer's position within the administration of justice and society, and the professional rules to which lawyers are subject. The recently proposed Regulation on credit rating agencies, for instance, which vests public authorities with extensive powers seems to ignore the confidentiality of the client-lawyer relationship and illustrates very well the CCBE's concerns.

The CCBE is anxious that the Commission's consultation on hedge funds might lead to proposals aiming at establishing a regulatory and supervisory framework which would put at stake the confidential character of the lawyer-client relationship, similar to what has been proposed in the area of credit rating agencies (see, for instance, Article 20 of the Commission proposal for a Regulation of the European Parliament and of the Council on Credit Rating Agencies, COM(2008) 704 final).

The right to consult a lawyer in order to ask advice should always be provided on the basis that the client is assured that what is said to the lawyer remains confidential. This is part of fundamental freedoms and rights. This concept is found everywhere in the European Union as a fundamental value of the rule of law, and is recognised in judgements of the European Court of Justice and the European Court of Human Rights (such as *Akzo Nobel*, Joined Cases T-125/03 and T-253/03; *Wouters*, Case C-309/99; *Niemietz v Germany* decided by the ECtHR of 16/12/1992). Professional secrecy and legal professional privilege, as they are called – although they describe rights to protect clients and enable them to consult a lawyer with guaranteed confidentiality – are known in both the civil and common law systems, and indeed in every democratic system run under the rule of law around the world.

The CCBE therefore urges you to consider seriously our concerns and to include the protection of professional secrecy and legal professional privilege in any future proposals, particularly in relation to powers that might be given to regulatory bodies over hedge funds, so as to continue to guarantee this safeguard.

We are happy to discuss this with you further if you wish.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping loops and a long horizontal stroke at the end.

Anne-Birgitte Gammeljord  
CCBE President