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CCBE response to the Communication from the Commission on the creation of a Fundamental Rights Agency

Conseil des barreaux européens – Council of Bars and Law Societies of Europe
association internationale sans but lucratif

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The Council of the Bars and Law Societies of Europe (CCBE), which through the national Bars and Law Societies of the Member States of the European Union and the European Economic Area represents more than 700,000 European lawyers, is responding in this paper to the communication on the Fundamental Rights Agency (COM (2004) 693 final) and the list of questions recently published by the Commission.

The CCBE would like to express its support for the creation of a Fundamental Rights Agency.

The CCBE would like to stress that whatever the final structure of such an Agency will be and whatever its future relationship with other bodies - in particular with the network of experts on Fundamental Rights - it recommends that the following items should be taken into account:

1. Civil society should be represented within the Agency.

2. Due to the fundamental role of lawyers in fundamental rights, the lawyers' profession should be represented within the Agency.

3. The Agency should take note of the CCBE proposal to set up a European Criminal Law Ombudsman, and analyse possible synergies between the Agency and such an Ombudsman. The CCBE proposal on this topic aims to correct the imbalance that currently exists at the European level between the rights of the prosecution and the rights of the defence. The primary concern of the Ombudsman would be to protect and safeguard the rights of suspects, defendants, and those under investigation in cross-border or trans-national cases in the EU. In addition, he or she would:

- A. deal with problems and complaints in relation to the European Arrest Warrant, the European Evidence Warrant, and similar legislation;
- B. react swiftly to problems encountered in the early stages of proceedings in order to seek to provide a remedy;
- C. be able to approach the European Commission and national authorities for information or assistance, and also the national judiciary;
- D. be able to approach the appropriate bodies within the European Parliament, and to inform the public what is going on;
- E. coordinate action and provide help to construct a defence team in both the issuing and the executing state so that an effective defence can be put forward in both countries;
- F. provide assistance in locating legal aid or legal assistance or funding where required;
- G. address the lack of "equality of arms" where it arises.

For further information on this proposal, please see the attached paper outlining it in more detail (also available on our website – www.ccbe.org).

4. The Agency should take account of certain principles in its actions, as outlined in a recent CCBE resolution on human rights and the rule of law, published on International Human Rights Day (9 December 2004), as follows:

1. Whenever measures are introduced to increase public security, there must be a full assessment of the effects on human rights and the rule of law principle and on society at large, and this assessment must take place in full transparency for the public.
2. In a state that observes the rule of law and grants its citizens access to justice, it is vital that there exists protection of confidences that a client has made to his or her lawyer as a trusted

advisor. The status of the lawyer, like the status of the press, therefore is a yardstick by which to measure a free and democratic society which strives to follow the rule of law.

3. A society that is based on human rights and the rule of law principle cannot be defended by putting these values out of effect. To do so only does the job of those who wish to destroy such a society.

The CCBE's resolution on human rights and the rule of law is attached, and is also available on our website (www.ccbe.org).