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PRESS RELEASE

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CCBE welcomes strong support for lawyer-client confidentiality by the European Court of First Instance

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, generally welcomes the terms of the decision of the European Court of First Instance in the Akzo Nobel case concerning the confidentiality of communications between lawyers and their clients (*Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v Commission of the European Communities, Joined Cases T-125/03 & T-253/03*, see: <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-125/03>).

The CCBE intervened in support of the applicants, members of the Akzo Nobel group, in two joined cases concerning an investigation by the European Commission seeking evidence of anti-competitive practices. The focus of the cases was the rules protecting the confidentiality of communications between lawyers and their clients, referred to in the judgment as legal professional privilege (LPP).

The Court found that the Commission infringed essential procedural requirements, first, by forcing the companies to allow the Commission inspectors to have a cursory look at certain documents, and second, by reading some of the documents in question without first giving the companies the opportunity to bring the issue before the Court of First Instance.

Most importantly, the Court upheld the argument presented by the CCBE and other parties that internal company documents drawn up exclusively for the purpose of seeking legal advice from an independent lawyer in exercise of the rights of defence may benefit from LPP. The CCBE welcomes the strong message the Court gave by underlining the importance of LPP in safeguarding the public interest in the proper administration of justice.

However, the CCBE regrets that the Court did not take the opportunity to follow the line of the CCBE that in relation to in-house counsel, the scope of LPP should be governed by national law, since there is no Community harmonisation of the rules organising the profession (and Community law itself recognises the differences between the professions as structured in the Member States). The CCBE argued that communications with in-house legal advisers should be protected if the legal advisers are fully subject to professional ethics and discipline under the supervision of the Bar or Law Society in the Member State in question.

CCBE President, Colin Tyre QC, underlined the importance of the judgement for the European legal profession: "I am very pleased that the Court of First Instance has firmly supported legal professional privilege as a cornerstone of the right of defence protected under the European Convention of Human Rights. I regret, however, that the Court did not take the opportunity to develop the scope of legal professional privilege to include those in-house counsel who are members of a Bar or Law Society and therefore subject to professional obligations of confidentiality under national rules."

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