

## Case C-119/09

**Société fiduciaire nationale d'expertise comptable**

**v**

**Ministre du Budget, des Comptes publics  
et de la Fonction publique**

(Reference for a preliminary  
ruling from the Conseil d'État (France))

(Freedom to provide services — Directive 2006/123/EC — Article 24 — Prohibition  
of total prohibitions on commercial communications by the regulated professions —  
Profession of qualified accountant — Prohibition on canvassing)

Opinion of Advocate General Mazák delivered on 18 May 2010 . . . . . I - 2554

Judgment of the Court (Grand Chamber), 5 April 2011 . . . . . I - 2568

### Summary of the Judgment

1. *Freedom of establishment — Freedom to provide services — Services in the internal market — Directive 2006/123 — Commercial communications*  
(*European Parliament and Council Directive 2006/123, Arts 4(12) and 24*)

2. *Freedom of establishment — Freedom to provide services — Services in the internal market — Directive 2006/123 — Commercial communications by the regulated professions (European Parliament and Council Directive 2006/123, Art. 24(1) and 2)*

1. The concept of ‘commercial communication’, as defined in Article 4(12) of Directive 2006/123, concerning services in the internal market, covers not only traditional advertising but also other forms of advertising and communications of information intended to obtain new clients.

Thus, canvassing comes within the concept of ‘commercial communication’, within the meaning of Articles 4(12) and 24 of Directive 2006/123, since it constitutes a form of communication of information intended to seek new clients, it involves personal contact between the provider and a potential client, in order to offer the latter services and, it can, therefore, be classified as direct marketing.

(see paras 32-33, 38)

2. Article 24(1) of Directive 2006/123 on services in the internal market must be interpreted as precluding national legislation which totally prohibits the members

of a regulated profession, such as the profession of qualified accountant, from engaging in canvassing. It follows from both the purpose and the context of Article 24 that the intention of the EU legislature was not only to put an end to total prohibitions, on the members of a regulated profession, from engaging in commercial communications whatever their form but also to remove bans on one or more forms of commercial communication within the meaning of Article 4(12) of Directive 2006/123, such as, for example, advertising, direct marketing or sponsorship. Having regard to the examples in Recital 100 of that directive, professional rules forbidding the communication, in one or more given media, of information on providers or their activities must also be regarded as total prohibitions proscribed by Article 24(1) of that directive.

Thus, the ban on canvassing, conceived broadly, in that it prohibits any canvassing, whatever its form, content or means

employed, and which includes a prohibition of all means of communication enabling the carrying out of that form of commercial communication, must be regarded as a total prohibition of commercial communications prohibited by Article 24(1) of Directive 2006/123.

comes within the scope of Article 24(1) of Directive 2006/123, such legislation is incompatible with that directive and cannot be justified under Article 24(2) of that directive, even if it is non-discriminatory, based on an overriding reason relating to the public interest and proportionate.

Since it totally prohibits a form of commercial communication and, therefore,

(see paras 29, 41-42, 45-46,  
operative part)