



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 30/11**

Luxembourg, 5 April 2011

Judgment in Case C-119/09

Société fiduciaire nationale d'expertise comptable v Ministre du Budget, des Comptes publics et de la Fonction publique

## **National rules may not totally prohibit canvassing by qualified accountants**

*Such a ban, prohibited by the Services Directive, constitutes a restriction on the freedom to provide cross-border services*

The Services Directive<sup>1</sup> is intended to establish a free and competitive market in services in order to promote economic growth and create jobs in the European Union. In that respect, it requires the removal of barriers to the freedom of establishment and to the free movement of services between Member States, such as total prohibitions on any form of commercial communication by the regulated professions<sup>2</sup> promoting, directly or indirectly, an undertaking's goods, services or image. The directive is also intended to safeguard the interests of consumers by improving the quality of the regulated professions' services in the internal market.

The French Code of professional conduct and ethics of qualified accountants forbids them to engage in any 'canvassing', that is to say any unsolicited contact with third parties with a view to offering their services. Their participation in symposiums, seminars or other academic or scientific events is allowed provided they do not, on such occasions, engage in acts comparable to canvassing.

Société fiduciaire applied to the Conseil d'État (France) for the annulment of that regulatory code on the ground that the prohibition it imposed is contrary to the Services Directive.

The Conseil d'État decided to refer a question to the Court of Justice on the interpretation of the Services Directive asking whether the Member States may prohibit, generally, the members of a regulated profession – such as that of qualified accountants – from engaging in canvassing.

In the Court's view, it is clear, first of all, that in adopting that directive the EU legislature's intention was, first, to put an end to total prohibitions on the members of a regulated profession from engaging in commercial communications **whatever their form**. It intended, secondly, to remove prohibitions on one or more forms of commercial communication, such as, for example, advertising, direct marketing or sponsorship. 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 the directive.

However, the Member States retain the right to lay down prohibitions relating **to the content or methods of commercial communications as regards regulated professions**, provided that the rules laid down are justified and proportionate for the purposes of ensuring the independence, dignity and integrity of the profession, as well as professional secrecy.

Next, the Court analyses the scope of the concept of 'canvassing' in order to determine whether it constitutes 'commercial communication' which, under the directive, a Member State may not prohibit generally and absolutely.

<sup>1</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36). The Member States had to transpose the directive by 28 December 2009 at the latest.

<sup>2</sup> A regulated profession is 'a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications ...'.

Since there is no definition in European Union law of the concept of ‘canvassing’, the Court interprets it as a form of communication of information intended to seek new clients which involves personal contact between the provider and a potential client, in order to offer the latter services. It can, therefore, be classified as direct marketing. Therefore, canvassing constitutes commercial communication within the meaning of the directive.

Consequently, **the Court’s answer is that the prohibition on any canvassing by qualified accountants can be regarded as a total prohibition of commercial communications, prohibited by the directive.**

Indeed, the ban, imposed broadly by the French rules, prohibits any canvassing, whatever its form, content or means employed. Thus, that ban prohibits all means of communication enabling it.

It follows that **such a prohibition must be regarded as a total prohibition on commercial communications and constitutes, therefore, a restriction on the freedom to provide cross-border services.** Indeed, that prohibition could affect professionals from other Member States more, by depriving them of an effective means of penetrating the French market.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355