

Opinion of Advocate General Mazák delivered on 18 May 2010

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

Reference for a preliminary ruling: 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

Case C-119/09

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1. In this case, the Court is called upon for the first time to rule on the interpretation of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. (2)

2. The question referred for a preliminary ruling by the French Conseil d'État (Council of State) relates to the freedom of commercial communication of the members of the regulated professions, in this case qualified accountants, which is governed by Article 24 of Directive 2006/123. This question is worded as follows:

'Was Directive 2006/123 ... intended to proscribe, in respect of the regulated professions falling within its scope, any general prohibition, whatever the form of commercial practice concerned, or does it leave the Member States the option of maintaining general prohibitions in respect of certain commercial practices, such as canvassing?'

3. The national court considers that the Court's reply to its question is necessary in order for it to rule on the action brought by the Société fiduciaire nationale d'expertise comptable (National Association of Qualified Accountants; 'Société fiduciaire') for annulment of Decree No 2007-1387 of 27 September 2007 on the Code of professional conduct and ethics of qualified accountants (décret n° 2007-1387, du 27 septembre 2007, portant code de déontologie des professionnels de l'expertise comptable) ('Decree No 2007-1387') in so far as it prohibits canvassing. Infringement of Directive 2006/123, and in particular Article 24 thereof, constitutes one of the grounds for annulment raised before the national court by Société fiduciaire. (3)

4. Before the Court of Justice, written observations have been lodged by Société fiduciaire, the French, Cypriot and Netherlands Governments, and the Commission of the European Communities. The hearing was held on 23 March 2010 in the presence of the representatives of Société fiduciaire, and of the Agents of the French and Netherlands Governments and of the Commission.

5. The proposed replies to the question referred may be classified in two groups. The first group includes the replies proposed by Société fiduciaire, the Netherlands Government and the Commission. They propose that the Court reply that Article 24(1) of Directive 2006/123 proscribes, in respect of the regulated professions falling within its scope, any total prohibition on a form of commercial communication and therefore, also, a prohibition such as the one at issue in the main proceedings, namely, a prohibition on canvassing.

6. The second group of proposed replies includes those of the French and Cypriot Governments. According to them, the aforementioned provision of Directive 2006/123 does not, as a rule, preclude national legislation prohibiting canvassing in respect of the regulated professions.

Legal framework

Directive 2006/123

7. Directive 2006/123 was adopted on the basis of the first and third sentences of Article 47(2) EC and Article 55 EC.

8. Recital 2 in the preamble to Directive 2006/123 is worded as follows:

'A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.'

9. Recital 5 in the preamble to Directive 2006/123 provides:

'It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the [EC] Treaty. ...'

10. Recital 7 in the preamble to Directive 2006/123 states:

'This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. ...'

11. According to Recital 100 in the preamble to Directive 2006/123:

'It is necessary to put an end to total prohibitions on commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather by removing those bans which,

in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communication, it is necessary to encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.'

12. Article 4 of Directive 2006/123 defines the main concepts of the directive. Two definitions are relevant for the purposes of this case, namely those of the concepts of 'regulated profession' and 'commercial communication'.

13. The regulated professions are defined in Article 4(11) of Directive 2006/123 by reference to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (4) and, more particularly, to Article 3(1)(a) thereof. According to that provision, 'regulated profession' means:

'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; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. ...'

14. Article 4(12) of Directive 2006/123 defines the concept of 'commercial communication' as follows:

'any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:

- (a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an e-mail address;
- (b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.'

15. Article 24 of Directive 2006/123, entitled 'Commercial communications by the regulated professions', which is in Chapter V of the directive, headed 'Quality of services', provides:

'1. Member States shall remove all total prohibitions on commercial communications by the regulated professions.

2. Member States shall ensure that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consistent with the specific nature of each profession. Professional rules on commercial communications shall be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.'

16. Under Article 44(1) of Directive 2006/123, the period prescribed for transposing the directive expired on 28 December 2009.

National legislation

17. The Code of professional conduct and ethics of qualified accountants ('the Code of conduct') is annexed to Decree No 2007-1387.

18. Article 12 of the Code of conduct states:

'I. The persons referred to in Article 1 are prohibited from carrying out any unsolicited canvassing with a view to offering their services to third parties. Their participation in symposiums, seminars or other academic or scientific events is authorised in so far as they do not, on that occasion, carry out acts comparable to canvassing.

II. The persons referred to in Article 1 are permitted to carry out promotional activities in so far as those activities provide the public with useful information. The methods used for that purpose shall be exercised with discretion, so as not to prejudice the independence, dignity and honour of the profession, professional secrecy and fairness towards clients and other members of the profession. When they present their professional activity to third parties, by whatever means, the persons referred to in Article 1 shall not adopt any form of expression liable to undermine the dignity of their role or the reputation of their profession. Those modes of communication and any others are allowed subject to being practised in a restrained and respectable manner, and on condition that their content does not contain inaccuracies, is not liable to mislead the public, and does not contain any comparative element.'

19. The Code of conduct entered into force on 1 December 2007, in accordance with the detailed rules laid down in Article 3 of Decree No 2007-1387.

Assessment

20. Before examining the question referred for a preliminary ruling, I should like to make two observations concerning the fact, to which the French Government refers in its written observations, that Decree No 2007-1387 was adopted after the entry into force of Directive 2006/123 but before the expiry of the time-limit for its transposition and that the reference for a preliminary ruling was also made before that date.

21. In the first place, I should like to refer to my Opinion in Case C-357/09 PPU *Kadzoev*, (5) in which I was dealing with the question of the admissibility of questions referred for a preliminary ruling where, in particular, they relate to a directive with a period for transposition which has not yet expired. On the basis of the case-law referred to therein, I came to the conclusion that that fact could not, on its own, constitute an obstacle to the admissibility of the questions referred.

22. Secondly, I should like to point out that it is clear from the order for reference that the national court itself took into account the fact that the prohibition on canvassing enacted by Decree No 2007-1387, were it to be regarded as contrary to Article 24 of Directive 2006/123, would seriously compromise the directive's implementation.

23. I shall now proceed to examine the question referred for a preliminary ruling, by which the Court is invited, in essence, to determine the scope of the obligation to 'remove all total prohibitions on commercial communications by the regulated professions' as referred to in Article 24(1) of Directive 2006/123.

24. In that question itself, the national court contemplates two approaches for the purposes of interpreting that obligation. According to the first approach, the obligation to remove all total prohibitions applies to any total prohibition of any form whatsoever of commercial communication. According to the second approach, that obligation refers only to the total prohibition on any commercial communication, (6) which would mean that the Member States would retain the right to maintain total prohibitions in respect of certain forms of commercial communication.

25. I consider that a literal interpretation of Article 24 of Directive 2006/123 does not allow an answer to be given to the question referred for a preliminary ruling since it does not provide an indisputable conclusion.

26. Indeed, the use of the plural in the expression 'total prohibitions', instead of the singular, may permit two conflicting conclusions, neither of which is automatically unfounded.

27. According to one submission, supported among others by the Commission, it would follow that the Community legislature intended to remove not only the total prohibition on any commercial communication, but also total prohibitions on certain forms of commercial communication.

28. According to another submission, by the French Government, although the Community legislature refers to 'total prohibitions', it is referring only to the total prohibition of any commercial communication by the regulated professions, because, in most of the Member States, there was not, previously, a single total prohibition applicable to all the regulated professions, but as many total prohibitions as professions concerned.

29. In the light of the inadequacy of the literal interpretation of Article 24 of Directive 2006/123, it is important to take note, moreover, of the objective of that directive and of the position of Article 24 in the scheme of Directive 2006/123.

30. As regards the objective of Directive 2006/123, it must be stated, on the basis of Recitals 2 and 5 in its preamble, that it is to remove obstacles to two fundamental freedoms under the Treaty, namely, freedom of establishment and free movement of services. In this way, Directive 2006/123 contributes to the achievement of the internal market.

31. As regards the scheme of Directive 2006/123, I should point out that Article 24, which is at the heart of this examination, is in Chapter V, entitled 'Quality of services'. It can hardly be denied that this chapter in general, and Article 24 in particular, are designed principally to safeguard the interests of consumers. It is apparent from the positioning of Article 24 within Directive 2006/123 that its purpose is to contribute to the quality of the services of the regulated professions within the framework of the internal market.

32. However, in the light of the content of Article 24, we may wonder in what respect the regulation of commercial communications can contribute to the quality of the services provided by the regulated professions within the framework of the internal market.

33. I am aware that, as far as its content is concerned, Article 24 has no direct effect on the quality of the services in question. However, its correct interpretation and application are a necessary prerequisite for the supply of high quality services, particularly in the sphere of the regulated professions, (7) because it is a sphere in which the problem of the asymmetry of information, which exists objectively between the provider and the recipient of a service, is more obvious.

34. The different forms of commercial communication consist, in essence, in the transmission of messages and information to potential clients, that is to say, to the potential recipients of the services provided.

35. Before the adoption of Directive 2006/123, the specific features of the regulated professions, described by Advocate General Jacobs in the Opinion he delivered on 23 March 2000 in *Pavlov and Others*, (8) were generally acknowledged to provide grounds for possible prohibitions on commercial communication by the regulated professions. (9)

36. Since Article 24(1) of Directive 2006/123 requires the Member States to remove all total prohibitions on commercial communications by the regulated professions, it seems that approach was altered by the approach taken by the directive. None the less, must it be accepted that the specific features of the services provided by the regulated professions no longer require regulation of their commercial communications other than that applicable to other services?

37. In the light of Article 24(2) of Directive 2006/123, the reply to that question must be in the negative. That provision requires Member States to ensure that commercial communications by the regulated professions comply with professional rules, in conformity with European Union law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consistent with the specific nature of each profession. According to Recital 100 in the preamble to Directive 2006/123, that means that Member States are authorised to retain bans on the content and methods of commercial communication.

38. The provisions contained in Article 24(1) and (2) of Directive 2006/123 do not concern a principle, in this case the removal of all total prohibitions on commercial communications by the regulated professions, and an exception to that principle. On the contrary, the provisions of Article 24(2) supplement the principle laid down in Article 24(1). Consequently, total prohibitions on commercial communications by the regulated professions are excluded without however forbidding the Member States to enact prohibitions on the content of a commercial communication.

39. In my view, the foregoing considerations seem to indicate that the Community legislature intended rather to remove any total prohibition on a form of commercial communication and not only the total prohibition on any commercial communication by the regulated professions. Such interpretation of Article 24 may be corroborated by Recital 100 in the preamble to Directive 2006/123, according to which the removal of total prohibitions on commercial communications by the regulated professions does not concern bans on the content of a commercial communication but bans which, in a general way and for a given profession, forbid one or more forms of commercial communication.

40. However, that conclusion does not fully resolve the problem raised by the question referred for a preliminary ruling.

41. In the light of the obscure nature of the content of the term 'canvassing', it may be asked whether this is a sufficiently separate form of commercial communication (meaning that its prohibition would not comply with the requirement in Article 24(1) of Directive 2006/123, interpreted in accordance with what I have stated above) or whether it is only a specific manner (a 'method') of using advertising as a form of commercial communication.

42. Directive 2006/123 contains only a general definition of the concept of 'commercial communication', without explaining its different forms or giving examples of them. Article 4(12) of the directive defines the concept in two ways: first, positively (stating what falls within the concept of commercial communication) and, secondly, negatively (stating what does not fall within that concept). Positively, commercial communication means 'any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession'. Negatively, the following are not, as such, covered by the concept of commercial communication:

- (a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an e-mail address;
- (b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.'

43. As I have already mentioned, this is a very general definition but, at the same time, I must admit that it is a definition which is flexible enough to cope with the rapid development of the communications sector.

44. EU law contains no legal definition of the concept of 'canvassing', any more than does Directive 2006/123. Furthermore, its content is likely to vary in the legal systems of the different Member States. In the case of the Code of conduct which is the subject-matter of the main proceedings, canvassing, within the meaning of the prohibition laid down in Article 12 thereof, means unsolicited contact by qualified accountants with a third party with a view to offering their services.

45. In my view, canvassing may be defined by reference to three factors. Two of them correspond, in essence, to those set forth by the French Government. First, there is action, consisting in the representative of the regulated profession making direct, personal unsolicited contact with a third party and, secondly, there is content, consisting in the delivery of a commercial message. However, it cannot be any commercial message, it can only be a message which exceeds the limits of information about the activities of the member of the regulated profession in question who is offering his services. A third factor relates to the individualisation of the recipient of the commercial message mentioned.

46. This definition has the effect of excluding canvassing through certain media, such as television, radio or the printed press. In such cases, the individualisation of the recipient of the commercial message is lacking. In contrast, the telephone, post or electronic mail constitute typical methods of canvassing. (10)

47. Two factors lead me to consider that, in EU law, canvassing is not regarded as an individual form of commercial communication, but only as a specific method of advertising as a form of commercial communication.

48. First, I should mention Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, (11) Article 86(1) of which defines 'advertising of medicinal products' as including 'any form of door-to-door information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products'. That provision also contains a non-exhaustive list of forms of advertising, among which are practices which meet my definition of canvassing. For example, there is advertising of medicinal products to persons qualified to prescribe or supply them, or visits by medical sales representatives to persons qualified to prescribe or supply medicinal products.

49. Secondly, I must refer to the Court's judgment in *Alpine Investments*. (12) In paragraph 28 of that judgment, the Court stated that telephone canvassing is a 'rapid and direct technique for marketing and for [contact]'

50. Having regard to my definition of canvassing, to that in Directive 2001/83 and to that in the judgment in *Alpine Investments*, I am driven to conclude that the prohibition on canvassing does not, as such, infringe the requirement in Article 24(1) of Directive 2006/123 since canvassing is not a sufficiently separate form of commercial communication which may be distinguished from advertising but, on the contrary, simply a method of advertising.

51. It may therefore be established that the prohibition on canvassing by qualified accountants contained in Article 12 of the Code of conduct may reflect the opportunity offered in Article 24(2) of Directive 2006/123 to control the content and methods of commercial communications by professional rules relating to the independence, dignity and integrity of the regulated profession, as well as to professional secrecy.

52. The validity of this hypothesis depends in the end on the answer to two questions. First, it is a question of whether canvassing by qualified accountants constitutes a threat to the independence, dignity and integrity of that profession, or to professional secrecy. If it does, it must then be determined, secondly, whether the prohibition on canvassing by qualified accountants is non-discriminatory, justified by an overriding reason in the public interest and proportionate.

53. As regards canvassing as a threat to the values referred to in Article 24(2) of Directive 2006/123, I consider that that method of advertising fundamentally affects the independence of qualified accountants.

54. Independence is a functional principle affecting the very essence of the profession of qualified accountancy. If we apply *mutatis mutandis* the definition of independence given by the Court in its judgment in *Commission v Germany*, (13) the independence of qualified accountants may be defined as the exclusion of any directions or any other external influence, whether direct or indirect, which could call into question the performance of their tasks.

55. I believe it is a matter of common knowledge that direct, personal contact between a potential client and a qualified accountant, by which the latter offers his services (which is one of the criteria for being classified as canvassing) may form the basis of a personal relationship in which an opportunity to exert influence is concealed. It should be pointed out that this is a matter of common knowledge confirmed by experience, and there is usually no need to prove it. Admittedly, in specific cases, it will always be necessary to establish that direct, personal contact has influenced a qualified accountant in such a way that his activity may no longer be regarded as independent.

56. We may conclude, at the very least, that direct, personal contact between a potential client and a qualified accountant, by which the latter offers his services, carries a real risk of compromising the qualified accountant's independence. From this point of view, the prohibition on canvassing laid down in respect of qualified accountants helps to prevent situations which could give rise to doubts regarding their independence.

57. It follows from the foregoing that the prohibition on canvassing in the Code of conduct may be regarded as a professional rule which protects the independence of the profession of qualified accountancy.

58. It remains to be determined whether the prohibition on canvassing in respect of qualified accountants succeeds, in the light of the requirements laid down, that it be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.

59. I am well aware that the prohibition on canvassing as such constitutes an obstacle to the freedom to provide services. That may also be the case of other professional rules designed to protect the independence, dignity and integrity of the regulated professions, as well as professional secrecy. For this reason, Article 24(2) of Directive 2006/123 requires the professional rules in question to be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate. These are conditions which are constantly linked to the justification for obstacles to the fundamental freedoms of the internal market.

60. The non-discriminatory nature of the prohibition on canvassing in the Code of conduct is not disputed in the present case.

61. As regards the justification for the prohibition on canvassing by an overriding reason relating to the public interest, the problem arises if we take account of Article 16(1)(b) of Directive 2006/123, in accordance with which Member States may not make access to or exercise of service activity in their territory subject to compliance with any requirements which are not justified for reasons of public policy, public security, public health or the protection of the environment.

62. It appears, at first sight, that professional rules which constitute an obstacle to the freedom to provide services can be justified only by the four reasons mentioned in Article 16(1)(b) of Directive 2006/123. However, that interpretation would make it impossible to implement the first sentence of Article 24(2) of Directive 2006/123, which states the reasons justifying the existence of rules governing professional ethics and conduct such as, in this case, the prohibition on canvassing, namely protection of the independence, dignity and integrity of the profession, as well as of professional secrecy. The same rules governing professional ethics and conduct cannot be required to abide by the other reasons at the same time.

63. It should therefore be stated that the protection of the independence, dignity and integrity of the regulated profession and of professional secrecy is to be regarded as an overriding reason relating to the public interest, within the meaning of Article 24(2) of Directive 2006/123.

64. Article 24(2) of Directive 2006/123 represents a *lex specialis* in relation to the rule in Article 16(1)(b) of that directive, so that, for the purposes of regulating the content and methods of commercial communications by the regulated professions, the overriding reasons relating to the public interest laid down non-exhaustively in the former provision and which differ from the justifying reasons referred to in Article 16(1)(b) of Directive 2006/123 are also to be accepted.

65. In points 53 to 57 of this Opinion, I have already shown that the prohibition on canvassing could be justified on grounds relating to the protection of the independence of qualified accountants.

66. As regards the question of the proportionality of the prohibition on canvassing, I consider that such measure does not go beyond what is appropriate and necessary to attain the lawful objectives it pursues.

67. In the light of the concept of canvassing as I have defined it in this Opinion, (14) I consider that the prohibition on canvassing is an appropriate legal means of limiting the scope of direct, personal contact between a potential client and a qualified accountant, by which the latter offers his services, and, therefore, of strengthening the independent exercise of that regulated profession.

68. Since the legislation which forms the subject-matter of the main proceedings is sufficiently precise and its application may be reviewed and directed by appropriate means, that legislation does not go beyond what is necessary to attain the lawful objectives it pursues. It must be added that the forms of commercial communication in which qualified accountants are authorised to engage, and the methods for implementing them, appear to be sufficient to enable them to inform potential clients about their activities, in accordance with the Community legislature's intention as expressed in Article 24 of Directive 2006/123.

Conclusion

69. In the light of the foregoing considerations, I propose that the Court give the following answer to the question referred for a preliminary ruling by the Conseil d'État:

Since canvassing is a specific method of practising one of the forms of commercial communication, namely, advertising, Article 24(1) of Directive 2006/123 of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as not precluding a Member State's legislation, such as that at issue in the main proceedings, under which qualified accountants are prohibited from engaging in any unsolicited canvassing with a view to offering their services to third parties, where that legislation is non-discriminatory, justified by one of the overriding reasons relating to the public interest cited by way of example in Article 24(2) of Directive 2006/123, and proportionate.

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- [1](#) – Original language: French.
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- [2](#) – OJ 2006 L 376, p. 36.
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- [3](#) – Société fiduciaire also raised a plea alleging infringement of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1). However, the question referred to the Court for a preliminary ruling does not relate to that aspect of the case. It is apparent from the order for reference that the national court considers that the reply to that plea is not unconnected with the reply which the Court will give to the question which has been referred to it.
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- [4](#) – OJ 2005 L 255, p. 22.
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- [5](#) – The Opinion was delivered on 10 November 2009; see points 28 to 47.
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- [6](#) – As regards the regulated professions, such a prohibition was not exceptional. Thus, the French legislation concerning qualified accountants prior to the adoption of Decree No 2007-1387 included, in essence, a total prohibition on any commercial communication.
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- [7](#) – The importance of the quality of the services provided by the regulated professions was described by Advocate General Léger in his Opinion in Case C-35/99 *Arduino* [2002] ECR I-1529, point 112. The relevance of Advocate General Léger's arguments has been unaffected by the passage of time.
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- [8](#) – Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451. In that regard, it is not important that the description was given from the point of view of competition law.
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- [9](#) – Even in 2008, that is after the entry into force of Directive 2006/123, the Court recognised a national law prohibiting any person and, in particular, dental care providers, in the context of professional services or a dental surgery, from engaging in advertising of any kind in the dental care sector (Case C-446/05 *Doulamis* [2008] ECR I-1377). Admittedly, the Court gave its ruling, in essence, only as regards Article 81 EC. In that case, it did not deal with the question of whether the legislation in question was compatible with the freedom to provide services.
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- [10](#) – As regards canvassing by electronic mail, let us recall that Article 13(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37) makes authorisation of the use of electronic mail for direct canvassing purposes conditional on the prior consent of subscribers.
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- [11](#) – OJ 2001 L 311, p. 67.
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- [12](#) – Case C-384/93 *Alpine Investments* [1995] ECR I-1141.
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- [13](#) – Case C-518/07 *Commission v Germany* [2010] ECR I-0000, paragraph 30.
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- [14](#) – See point 45 of this Opinion.