



EUROPEAN COMMISSION

Brussels, 8.6.2012
SWD(2012) 148 final

COMMISSION STAFF WORKING DOCUMENT

Detailed information on the implementation of Directive 2006/123/EC on services in the internal Market

Accompanying the document

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

on the implementation of the Services Directive.

A partnership for new growth in services 2012-2015

{COM(2012) 261 final}

{SWD(2012) 146 final}

{SWD(2012) 147 final}

1.1. Total prohibition of commercial communications — Article 24 of the Directive

Providers need to promote their services in order to access new markets. The Directive requires that Member States remove all total bans on commercial communications by regulated professions.

The Court of Justice has ruled that Article 24 requires Member States to remove total prohibitions on using one or more forms of commercial communication such as advertising, direct marketing or sponsorship. However, Member States retain the right to lay down targeted prohibitions related to the content or method of a form of commercial communication provided that they are justified and proportionate for the purpose of ensuring the independence, dignity and integrity of the profession, as well as professional secrecy.

In the light of the interpretation given by the Court of Justice, where a total ban on a form of commercial communication is identified, it must be corrected as a matter of priority.

Member States had to remove all total bans on commercial communications by regulated professions, while at the same time ensuring that commercial communications are compliant with the independence and integrity of the professionals. Commercial communication within the meaning of the Directive covers 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 Court of Justice has ruled, in its first judgment on a provision of the Services Directive (Case C-119/09), that Article 24 of the Directive precludes national legislation which totally prohibits the members of a regulated profession, such as qualified accountants, from engaging in canvassing. According to the Court, Article 24 requires Member States to remove total prohibitions on using one or more forms of commercial communication such as advertising, direct marketing or sponsorship. However, Member States retain the right to lay down targeted prohibitions related to the content or method of a form of commercial communication provided that they are justified and proportionate for the purpose of ensuring the independence, dignity and integrity of the profession, as well as professional secrecy.

Most Member States have adopted measures to implement these obligations, mainly by implementing Article 24 in their horizontal law.

In ten Member States questions concerning compliance of the national legislation were identified. In nine of these Member States, compliance issues concern the legal profession (**Bulgaria, Cyprus, Estonia, Greece, France, Ireland, Lithuania, Portugal** and the **United Kingdom**), and three Member States have maintained restrictions on commercial communications by veterinarians (**Cyprus, France** and **Portugal**). Furthermore, restrictions have been identified in **Cyprus** regarding commercial communications by engineers, in **France** regarding the accounting sector and in **Germany** in one Land regarding surveyors.
