



CEPLIS TELEGRAM

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The Court of Justice of the European Union authorises the canvassing for Liberal Professions



European Union.

In its ruling of the 5th of April 2011 (Case C-119/09), the Court of Justice of the European Union judged the complete interdiction of canvassing for those who practise a liberal profession (or similar) is in opposition with the Article 24 of the Directive 2006/123/CE of the European Parliament and the Council of the 12th December 2006, related to **Services within the Internal Market**. One of the objectives of this Directive, is to promote the development of a competitive market of services within the

This ruling of the European Court of Justice condemns complete interdiction of canvassing, even if it is based on a imperious general interest and commensurate reason. However, Member States remind free to impose restrictions regarding the content or ways of commercial communication on regulated professions. But the rules must be justified and proportionate in order to ensure the independence, the dignity, and integrity of the profession, as well as the professional discretion required.

The verdict applies for all professions: lawyers, accountants, auditors, notaries, pharmacists, physicians, ...



From now on, all persons exercising a liberal profession may look for new clients by contacting people who have not sought them and offering their services. the liberal professionals are now allowed to prospect for new customers by direct marketing, by canvassing the client.

On the other hand, many organisations of the liberal professions have prohibited canvassing activities, through different codes of conduct. They consider canvassing in opposition with the ethics of their profession. These organizations now have to adapt their code and make canvassing permissible for their members.

The ruling indicates that it is the general restrictions that are prohibited. Organisations can always decide to adopt specific restrictions and should use this flexibility to avoid certain excesses. However, this flexibility is reduced. The idea of canvassing is large, and there is a concern that the “specific” restrictions cannot match against the lifting of all restrictions.

The liberal professions will need to take action to adapt their codes of conduct and react before excesses just sully the seriousness and the strictness of their respective professions.

For further information on this article, please contact CEPLIS' Secretariat

The right to exercise notaries activities in France is extended to other EU-citizens



According to the EU principle of non-discrimination (Article 18 of the Treaty on the Functioning of the European Union), the exercise of a profession within a Member State cannot be restricted to the citizens of that Member State alone. This principle is of course subject to exceptions, notably regarding for regulated professions such as liberal professions. For instance, a State has the right to restrict the access to certain professions if they participate to the exercise of “public authority”. The fact that a French citizen cannot be policeman in Belgium looks at first sight like a discrimination based on nationality, but it is indeed not illegal according to Community law.

The challenge is to determine what is exactly the “exercise of public authority” and therefore what can justify the restriction to the access of some professions. The European Commission and the French Government have recently clashed on the case of French Notaries. Asked to deliberate on the issue, the **European Court of Justice** had to determine whether the Notarial activity – especially the establishment of the authenticity of acts – is an exercise of public authority according to EU law, and thus justifies a restriction that makes it possible only for French citizen to be Notaries in France, as suggested by the French government.

The Court has now decided that notaries, since they guarantee the authenticity of acts and documents in everyday life, participate to a mission of general interest. This, according to the Court, justifies restriction in the recruitment and establishment modalities of notaries. Nevertheless, it has also stated that this activity cannot be considered as an “exercise of public authority”, since the importance here should be rather placed on the free will of individuals to enter in a contract relationship.

The Court of Justice of the European Union consequently estimated that if the organisation and the rules regulating notaries activities in France are absolutely in line with EU law, the situation is not the same for the nationality restriction. Notaries activities in France must, according to the Court, be open to citizens of every EU-member State, according to the current rules of the profession, which remain unchanged.

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The European Commission consults public authorities, business and civil society on access to external public procurement markets

The European Commission is considering the **introduction of new rules on procurement markets**. In order to achieve this goal, in the framework of the package of legislative proposals “**Internal Market Act**” (see Telegram n°8/11), it has decided to consult stakeholders concerned by the current rules on their possible modifications. According to the Commission, the objective is to improve the framework for negotiations on access to procurement markets of other commercial partners, in order to extend opportunities for EU enterprises.



Furthermore, it wants to “define clearly” the rules of access to European procurement markets for enterprises established outside the EU. The Commission justifies this need by the necessity to adapt to an evolving external environment. For instance, it insists on the differences between the EU and its commercial partners. “Through international commitments, such as the WTO Government Procurement Agreement (GPA) and trade agreements concluded with third countries or

regions, the EU has shown strong advocacy for an ambitious opening of international

public procurement markets. It has committed itself to granting market access to its public procurement market for most foreign goods, services and companies.



In contrast to the EU's policy favouring greater openness, many third countries are reluctant to (further) open their procurement markets to international competition. Whereas €312 billion of EU public procurement is open to bidders from member countries of the WTO agreement on procurement, the value of US procurement offered to foreign bidders is just €34 billion and €22 billion for Japan."

The deadline for participating in this consultation is August the 2nd.

The documents relating to the can be found here:

http://ec.europa.eu/internal_market/consultations/2011/access_EU_public_procurement_en.htm

http://trade.ec.europa.eu/consultations/?consul_id=154

Coming event: Debate "Call to Europe"



The Foundation for European Progressive Studies (FEPS) organize a debate "Call to Europe" on

the future of Europe: "If we did not have a united Europe nowadays, would there be any reason to bother creating it?". The debate will be hold the **29th and 30th of June, at the "Bibliothèque Solvay", Rue Belliard 137, 1040 Brussels, Belgium.**

The aim for this debate is to try to answer fundamental questions which often hit the headlines, and to bring a new vision for a political, social and international European Union.

As keynote speakers, the debate will welcome **Jean Asselborn**, Deputy Prime Minister and Foreign Minister of Luxembourg, **Pervenche Berès**, MEP and Chair of

the EP Employment and Social Affairs Committee, **Charles-Ferdinand Nothomb**,
Vice President of the European Movement, etc.

Please register online (note that the places are limited).

<http://www.tfaforms.com/203947>