

EFTA Court
1 rue du Fort Thüngen
L-1499 Luxembourg

Vaduz, 13 March 2023

To the President and Members of the EFTA Court

Written Observations

submitted, pursuant to Article 20 of the Statute and Article 97 of the Rules of Procedure of the EFTA Court, by the

Government of the Principality of Liechtenstein

represented by Dr. Andrea Entner-Koch, Director of the EEA Coordination Unit (*Leiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*), Romina Schobel, Deputy Director of the EEA Coordination Unit (*Stellvertretende Leiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*) and Dr. Claudia Bösch, Legal Officer of the EEA Coordination Unit (*Juristische Mitarbeiterin der Stabsstelle EWR der Regierung des Fürstentums Liechtenstein*), acting as agents of the Government of the Principality of Liechtenstein,

in Case E-14/22

Alexander Amann

in which the Princely Court of Appeal (*Fürstliches Obergericht*, hereinafter referred to as 'Court of Appeal') has requested the EFTA Court to give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

The Government of the Principality of Liechtenstein (hereinafter referred to as the 'Liechtenstein Government') has the honour to submit the following observations:

I. Questions referred to the EFTA Court

The Court of Appeal has stayed its proceedings in order to refer the following questions to the EFTA Court:

1. Does Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market preclude a provision such as Paragraph 35(1)(c) of the Professional Guidelines of the Liechtenstein Chamber of Lawyers which prohibits lawyers from offering professional services to specific categories of potential clients and which is to be construed, in accordance with the interpretation adopted by the *Liechtenstein Staatsgerichtshof* (Constitutional Court), as 'prohibiting proactive advertising by lawyers where they offer their services in certain situations to selected (groups of) people who have not themselves expressed an interest in those services'?
2. Is Article 24(1) of Directive 2006/123/EC to be interpreted as meaning that a national provision may not, in general, prohibit lawyers from, on their own initiative, contacting by letter potential clients who were not previously their customers, after ascertaining their personal addresses, and from offering them their services, in particular by bringing an action for damages in a case of damage affecting them as best only as investors?

II. Factual background of the case

1. With regard to the facts of the present case, the Liechtenstein Government would like to refer to the summary of the facts provided by the Court of Appeal in its request for an advisory opinion.
2. Furthermore, the Liechtenstein Government would like to emphasize the following:
3. In the case at hand, criminal investigations were conducted in Liechtenstein and in Austria against members of the board of directors of a Liechtenstein public limited company on the basis of complaints of criminal offences made by some of the shareholders of this company.
4. The criminal investigation procedures were closed both in Liechtenstein and Austria.
5. The lawyer respectively the law firm (hereinafter referred to as 'the lawyer'), who represented the complainants in the criminal investigations, then reached out to the shareholders of this company in Austria and Liechtenstein on his own initiative.
6. In this context, the Liechtenstein Government would like to emphasise that the lawyer has elicited the shareholders' addresses from the investigation file of the Public Prosecutor's Office.
7. Within the course of three months, the lawyer sent three letters to the shareholders of the company.
8. The main message of the first letter was to ask the shareholders to get in contact if they are interested in joining a specific civil action lawsuit against that public limited company referring to ongoing criminal investigations.
9. However, at the time the first letter was sent out, the criminal investigations mentioned in the letter were in fact already closed.
10. Hence, the lawyer sent out a second letter to the same shareholders to set those statements right.

11. Following, a third letter was sent out to additional new shareholders informing them that significant amounts of the investors' money never arrived at the company in the first place.
12. Several of these shareholders from Austria reached out to the Austrian Chamber of Lawyers and voiced concerns regarding the approach by the lawyer. The Austrian Chamber of Lawyers forwarded the concerns to the Liechtenstein Chamber of Lawyers, which then contacted the lawyer.

III. Legal framework

13. By way of introduction, the Liechtenstein Government considers it appropriate to briefly outline the legal framework relevant to answer the question referred for a preliminary ruling:

EEA Law

14. Directive 2006/123/EC on services in the internal market (hereinafter referred to as 'Services Directive' or 'the Directive')¹ aims to remove barriers to trade in services in the EEA by simplifying administrative procedures for service providers, enhancing the rights of consumers and businesses receiving services and fostering cooperation among EEA countries.
15. The Services Directive was considered EEA relevant and was incorporated into Annex X of the EEA Agreement concerning Services in general by Decision of the EEA Joint Committee No 45/2009 of 9 June 2009.²
16. Recitals 2, 7, 100 and 114 of the Services Directive are relevant for the assessment of the case at hand. The Liechtenstein Government will consider these recitals further in its analysis of the questions referred below.

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

² OJ L 162, 25.6.2009, p. 23.

17. Article 2 of the Services Directive defines the scope of the Services Directive and reads as follows:

1. *This Directive shall apply to services supplied by providers established in a Member State.*
2. *This Directive shall not apply to the following activities:*
 - (a) *non-economic services of general interest;*
 - (b) *financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC;*
 - (c) *electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC;*
 - (d) *services in the field of transport, including port services, falling within the scope of Title V of the Treaty;*
 - (e) *services of temporary work agencies;*
 - (f) *healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;*
 - (g) *audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;*
 - (h) *gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;*
 - (i) *activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;*
 - (j) *social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;*
 - (k) *private security services;*

(l) services provided by notaries and bailiffs, who are appointed by an official act of government.

3. This Directive shall not apply to the field of taxation.

18. Article 4 of the Services Directive entails the definitions which shall apply for the purpose of this Directive and provides in particular:

For the purposes of this Directive, the following definitions shall apply:

- 8) 'overriding reasons relating to the public interest' means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;*
- 11) 'regulated profession' means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC;*
- 12) '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. 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 electronic-mailing 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.*

19. Article 24 of the Services Directive concerns commercial communications by the regulated professions and stipulates that:

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.*

Liechtenstein Law

20. The Liechtenstein Lawyers' Act³ regulates the admission to the lawyer's profession as well as the practice of the lawyer's profession in Liechtenstein. In addition, Lawyers are subject to the Code of Conduct of the Liechtenstein Chamber of Lawyers (hereinafter referred to as 'Code of Conduct')⁴, which sets out their professional duties in more detail in addition to the statutory provisions of the Lawyers' Act.

21. Relevant for the case at hand are therefore the Lawyers' Act and the Code of Conduct.

22. Article 12 of the Lawyers' Act concerns the professional honour of lawyers and provides that

Lawyers shall be obliged to preserve the honour and reputation of the legal profession by acting truthfully and honourably

³ Rechtsanwaltsgesetz (RAG) vom 8. November 2013, LR-Nr. 173.510, as last amended.

⁴ Standerichtlinien der Liechtensteinischen Rechtsanwaltskammer vom 24. März 2014, https://www.rak.li/application/files/7316/1736/0896/Standesrichtlinien_der_Liechtensteinischen_Rechtsanwaltskammer.pdf.

23. Article 27 of the Lawyers' Act concerns commercial communications and provides that

1. *Lawyers shall be allowed to inform about their services and about them insofar as the information provided is objectively true, directly related to the profession and justified by an interest of the persons seeking legal assistance. They may not advertise their services or themselves in an overly commercial manner.*
2. *Lawyers may neither cause nor tolerate that any third parties engage in any commercial communication for them that they are themselves not allowed to engage in.*

24. §34 of the Code of Conduct concerns commercial communication in general and provides that

1. *The lawyer shall primarily advertise the quality of his legal services.*
2. *The lawyer may provide information about his services and his person, provided that the information is information is factually correct, directly related to the profession and justified by an interest justified. In doing so, he may name*
 - a) *academic titles and titles connected with the practice of the profession,*
 - b) *honorary princely titles,*
 - c) *knowledge of languages,*
 - d) *professions other than the profession of lawyer which may lawfully be pursued and which require an academic academic training, insofar as these activities are materially related to the exercise of a legal with the practice of a legal profession,*
 - e) *professional publications,*
 - f) *memberships in professional associations which are related to the practice of the profession,*
 - g) *his professional career,*
 - h) *fields of law in which he/she is primarily active or does not intend to be active,*
 - i) *the names and academic titles of the trainees working for him/her.*
3. *Only the name and the professional title as well as the information according to paragraph 2 litera a and b may be displayed on practice signs.*

25. §35 of the Code of Conduct concerns prohibited commercial communication and provides in its paragraph 1 that

1. The lawyer shall refrain from advertising that is untrue, unobjective, inconsistent with the honour and reputation of the profession, the professional duties and the function of the lawyer. with the honour and reputation of the profession, the professional duties and the lawyer's function in the administration of justice. This shall be deemed to be the case in particular in the event of:

- a) self-promotion by advertising his person or his services,*
- b) comparative reference to members of the profession,*
- c) offering professional services to certain categories of potential clients,*
- d) arousing objectively false expectations,*
- e) offering inadmissible fee advantages,*
- f) naming clients as references without their consent,*
- g) acquiring a mandate by exploiting a coercive situation,*
- h) handing over power of attorney forms to third parties for the purpose of passing them on to an unspecified group of persons,*
- i) Offering or granting benefits for the acquisition of a mandate,*
- j) referring to success or turnover figures.*

IV. Legal analysis

26. With its questions referred to the EFTA Court, the Court of Appeal first of all enquires whether a provision which prohibits lawyers from offering professional services to specific categories of potential clients and which is to be construed, in accordance with the interpretation adopted by the *Liechtenstein Staatsgerichtshof* (Constitutional Court), as 'prohibiting proactive advertising by lawyers where they offer their services in certain situations to selected (groups of) people who have not themselves expressed an interest in those services' is precluded by the Services Directive.

27. Moreover, the Court of Appeal asks whether Article 24(1) of the Services Directive is to be interpreted as meaning that a national provision may not, in general, prohibit

lawyers from, contacting by letter potential clients on their own initiative who were not previously their customers, after ascertaining their personal addresses, and from offering them their services, in particular by bringing an action for damages in a case of damage affecting them as best only as investors.

28. The Liechtenstein Government considers it reasonable to address the second question of the Court of Appeal, which concerns the content and scope of Article 24(1) of the Services Directive, first.
29. Following, the Liechtenstein Government would like to deal with the Court of Appeal's first question and elaborate as to whether the provision referred to, concretely §35 of the Code of Conduct, is compatible with the Services Directive.

Preliminary remarks concerning the scope of the Services Directive and its applicability to the case at hand

30. According to Article 2 of the Services Directive, the Directive applies to services supplied by providers established in an EEA State. As a basic rule, the Services Directive applies to all services, which are not explicitly excluded according to Article 2(2) of the Services Directive.
31. The term 'service' encompasses any self-employed economic activity which is normally provided for remuneration. The service is to be offered or provided by a natural person who is a national of an EEA State, or a legal person established in an EEA State.
32. Secondly, the service provided may not be explicitly excluded according to Article 2(2) of the Services Directive. Excluded services according to the Directive are *inter alia* non-economic services of general interest, electronic communications services and networks, financial services, activities which are connected with the exercise of official authority and services provided by notaries and bailiffs, who are appointed by an official act of government.

33. Services provided by lawyers are not excluded according to Article 2(2) of the Services Directive. As a matter of fact, the Services Directive entails certain provisions concerning lawyers and especially the interaction between the Services Directive and Directive 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis⁵ and Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services.⁶
34. Therefore, it is undisputed that lawyers do not fall under any of the services explicitly excluded according to Article 2(2) of the Services Directive. In addition, the Liechtenstein Government considers it undisputed that lawyers provide a service according to the Services Directive.
35. This is confirmed by the Handbook on the implementation of the Services Directive⁷, which states that *'[t]he Services Directives complements Directive 98/5/EC as concerns lawyers establishing themselves outside their home Member State by dealing with other matters, such as: [...] (ii) commercial communications (Article 24)'*.
36. For Article 24 of the Services Directive to apply, two conditions have to be fulfilled:
37. First of all, the communication in question must be a commercial communication and furthermore, the commercial communication must be made by a regulated profession.
38. The term commercial communication is defined in Article 4(12) of the Services Directive.
39. In the case at hand, a lawyer sent a letter directly to shareholders of a public limited company, asking them to get in contact if they are interested in joining a specific civil

⁵ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36), incorporated into the EEA Agreement by Decision of the EEA Joint Committee No. 85/2002 of 25 June 2002.

⁶ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17), part of the EEA Agreement at the time of signing in 1992.

⁷ Handbook on the implementation of the Services Directive by the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission), <https://op.europa.eu/en/publication-detail/-/publication/60e2d020-6c6f-11ed-9887-01aa75ed71a1>.

action lawsuit against the public limited company. In this letter, the lawyer informed the shareholders that a litigation funder was interested in the matter and would assume the costs and risks of the action in exchange for a share of the proceeds of successful proceedings. Furthermore, the shareholders were asked to join the lawsuit.

40. The Liechtenstein Government is convinced that such a communication must be considered a communication designed to directly promote the services of the lawyer. Hence, it is to be classified as a commercial communication intended to seek and acquire new clients according to Article 4(12) of the Services Directive.
41. Concerning the second condition of Article 24 of the Services Directive, namely the regulated profession, it can be determined that lawyers are *'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'*⁸. In this context the Liechtenstein Government would like to refer to its statements made in paragraph 36.
42. Accordingly, Article 24 of the Services Directives applies to the case at hand.

Observations to the questions referred for an advisory opinion

43. The questions posed by the Court of Appeal to this Court can be summarized as follows:
- (1) Is the relevant provision of the Code of Conduct to be seen as a provision completely banning one type of commercial communication regardless of its form, content or means employed and therefore falls under Article 24(1) of the Directive?

⁸ See Article 3(1)(a) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22), incorporated into the EEA Agreement by Decision No. 142/2007 of the EEA Joint Committee (OJ L 100, 10.4.2008, p. 70).

(2) If the first question is answered in the negative, are the relevant provisions justified and proportionate for the purposes of ensuring, in particular, the independence, dignity and integrity of the profession and protection of clients and potential clients?

44. As regards commercial communication by regulated professions, the Court of Justice specified that Article 24 of the Services Directive imposes two obligations on the EEA States⁹:
45. According to Article 24(1) of the Services Directive, any total prohibitions on commercial communications by regulated professions are not allowed. Such prohibitions forbid one or more forms of commercial communication, such as a ban on all commercial communications in one or more given media in a general way and for a given profession. This ban on commercial communications in the EEA therefore applies irrespectively of its form, content or means employed.
46. As long as the EEA States do not ban commercial communications irrespectively of its form, content or means employed, the right to lay down prohibitions relating to the content or methods of commercial communications as regards regulated professions remains with the EEA States.
47. Nevertheless, any such prohibitions and rules on commercial communications have to be justified and proportionate for the purposes of ensuring, in particular, the independence, dignity and integrity of the profession and protection of clients and possible clients.
48. Article 24(2) of the Services Directive requires the EEA Member States to ensure that any national rule concerning commercial communication by regulated professions complies with EEA law.
49. The Liechtenstein Government considers this assessment to be in line with the jurisprudence of the Court of Justice in Case C-119/09.

⁹ Judgment of the Court of Justice of 5 April 2011 in Case C-119/09 *Société fiduciaire nationale d'expertise comptable v Ministre du Budget, des Comptes publics et de la Fonction publique*, ECLI:EU:C:2011:208.

50. Hence, the second question of the Court of Appeal can already be answered in so far as Article 24(1) of the Service Directive does prohibit a ban on all commercial communications in one or more given media in a general way and for a given profession. Accordingly, an indistinct and general prohibition of direct marketing would come within the scope of Article 24(1) of the Service Directive and would not be allowed.
51. To be able to answer the first question of the Court of Appeal as to whether the Services Directives precludes a provision such as §35(1)(c) of the Code of Conduct,¹⁰ it first needs to be assessed as to whether §35(1)(c) of the Code of Conduct constitutes an indistinct and general prohibition of commercial communication, which would be covered by the scope of Article 24(1) of the Services Directive.
52. It becomes clear from the Lawyers' Act and the Code of Conduct that in Liechtenstein lawyers are not in general prohibited from advertising, but they are in fact only permitted to do so under certain circumstances.
53. According to the Lawyers' Act '*Lawyers shall be allowed to inform about their services and about them insofar as the information provided is objectively true, directly related to the profession and justified by an interest of the persons seeking legal assistance.*'
54. In addition, §34 of the Code of Conduct describes the advertising permitted to a lawyer in general terms, whereas §35 of the Code of Conduct describes the specific commercial communication prohibited.
55. The relevant paragraph of §35 of the Code of Conduct prohibits any advertising by offering professional services to specific categories of clients, if such commercial communication is untrue, unobjective, inconsistent with the honour and reputation of the profession, the professional duties and the role of lawyers in the administration of

¹⁰ The European legislator even encourages the EEA States and professional associations to set up Codes of Conducts and 'rules for commercial communications relating to the regulated professions and rules of professional ethics and conduct of the regulated professions which aim, in particular, at ensuring independence, impartiality and professional secrecy' on a Community level (see Recital 100 and 114 of the Services Directive).

justice.

56. The specific prohibitions according to §35 of the Code of Conduct – and in this case especially §35(1)(c) of the Code of Conduct – are to be interpreted in the light of these general requirements of impermissible advertising¹¹.
57. It results from this that §35 of the Code of Conduct – and in this case especially §35(1)(c) of the Code of Conduct – does not constitute a generalised prohibition of commercial communication.
58. Rather, the content of the commercial communication and whether it is untrue, unobjective, inconsistent with the honour and reputation of the profession, the professional duties and the role of lawyers in the administration of justice have to be taken into account.
59. Furthermore, by the sequence of the words '*certain categories*' and '*potential clients*', the relevant provision further clarifies that this prohibition only applies towards certain groups of people and in a very specific context. It therefore has to be assessed on a case by case basis whether in a specific legal context, certain categories of potential clients are offered specific professional services.
60. This case by case analysis to clarify whether the requirements are fulfilled, is conducted by the Liechtenstein Chamber of Lawyers respectively the Court of Appeal as disciplinary Court, which consider the context, content, targeted audience and specific setting of the commercial communication.
61. **In conclusion, §35(1)(c) of the Code of Conduct does not fall within the scope of Article 24(1) of the Services Directive, as it does not constitute a prohibited ban on all commercial communications in one or more given media in a general way and for a given profession according to Article 24(1) of the Services Directive.**

¹¹ Specifically, whether the commercial communication is untrue, unobjective, inconsistent with the honour and reputation of the profession, the professional duties and the role of lawyers in the administration of justice (Article 12 of the Lawyers' Act and §35(1) of the Code of Conduct).

62. Thus, as already established, as long as prohibitions of commercial communication do not ban commercial communications irrespective of their form, content or means employed, the right to lay down prohibitions relating to the content or methods of commercial communications as regards regulated professions remains with the EEA States.
63. It is undisputed that such prohibitions and rules on commercial communications have to be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.
64. The Liechtenstein Government is convinced that §35(1)(c) of the Code of Conduct fulfils these conditions for the following reasons:
65. Non-Discriminatory: A rule is non-discriminatory if it does not – directly or indirectly – discriminate on ground of nationality.
66. §35(1)(c) of the Code of Conduct applies to lawyers entered in the register of lawyers, European lawyers entered in the register of the established European lawyers and trainee lawyers entered in the register of trainee lawyers.
67. The provision therefore applies irrespective of nationality or any apparently neutral provision, criterion or practice which would put persons of a specific nationality at a disadvantage compared with others.
68. Justified by an overriding reason: According to the long-standing case law of the Court of Justice and this Court, the concept of overriding reasons related to public interest includes in particular the protection of the recipients of services, in this case the protection of clients and potential clients, the proper administration of justice, the prevention of unfair competition, the prevention of fraud and other such overriding reasons relating to the public interest.¹²

¹² Handbook on the implementation of the Services Directive, page 75.

69. Article 24(2) of the Services Directive specifically refers to the independence, dignity and integrity of the profession as reasons for introducing rules on commercial communication.
70. The Liechtenstein Government wants to highlight that the Services Directive and Article 24, in particular, intend to safeguard the interests of recipients of services by improving the quality of the services of the regulated professions in the internal market. This does not interfere with the main target of the Service Directive, namely to remove restrictions on the freedom of establishment for providers in EEA States and on the free movement of services between the EEA States, but rather contributes significantly to the achievement of this target.¹³
71. The Liechtenstein Government considers this of key importance in a functioning, lawful and fair legal system.
72. The recipients of the services provided by lawyers are particularly worthy of protection, due to the specific features of the market in question and the asymmetry of information between clients and lawyers because of their high level of technical knowledge.
73. §35(1)(c) of the Code of Conduct aims at protecting recipients of services provided by lawyers of law firms from being compelled to litigate or join a lawsuit by depicting commercial communication. This is illustrated by the fact that in the case at hand, the shareholders saw the need to file a complaint.
74. Besides, §35(1)(c) of the Code of Conduct aims at protecting the dignity and integrity of the profession, ensuring the honour and prestige of the legal profession as an

¹³ Recital 2 of the Services Directive which states that

'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.'

Recital 7 of the Services Directive which states that

'That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially protection of consumers, which is vital in order to establish trust between Member States. This Directive also takes into account other general interest objectives, including the protection of the environment, public security and public health as well as the need to comply with labour law.'

This is also highlighted by the Court of Justice in its judgment in Case C-119/09, recital 28.

important branch of the Liechtenstein legal system. Finally, it aims at ensuring the proper administration of justice.

75. Proportionate: For this condition to be fulfilled, the need for rules on commercial communication must be suitable for securing the attainment of the objective pursued which could not be attained by means of a less restrictive measure.¹⁴
76. According to the case law by the Court of Justice and this Court, when assessing the suitability of the measure, it is important to consider whose interests the concrete measure aims to protect.¹⁵ Furthermore, the national measure has to be appropriate to attain the objective pursued and has to effectively contribute to achieving the objective pursued.
77. §35(1)(c) of the Code of Conduct shall protect not only the interests of clients and potential clients of a lawyer, but also safeguard and protect the honour and reputation of the profession of a lawyer.
78. As the Liechtenstein Government has already explained in detail, §35(1)(c) of the Code of Conduct does not prohibit any form of direct commercial communication, provided that the statements are factual, truthful and in accordance with the honour and reputation of the profession and the professional duties and that a specific professional service is offered to a very specific category of clients.¹⁶
79. The national measures in the case at hand prevent lawyers from contacting potential clients in specific cases to compel them to litigate or join a lawsuit and therefore to use the asymmetry of information between clients and lawyers and the pressure of an upcoming litigation to their advantage.

¹⁴ Judgment of the Court (Third Chamber) of 1 October 2015 in Case C-340/14 *R.L. Trijber v College van Burgemeester en Wethouders van Amsterdam and J. Harmsen v Burgemeester van Amsterdam*, ECLI:EU:C:2015:641; Judgment of the Court (Fourth Chamber) of 4 July 2019 in Case C-377/17 *European Commission v Federal Republic of Germany*, ECLI:EU:C:2019:562.

¹⁵ See Handbook on the implementation of the Services Directive, page 81.

¹⁶ See paragraph 57-60.

80. This also ensures the preservation of the honour and reputation of the profession and the professional duties as lurid commercial communication is prevented and it is ensured that the potential party is able to decide for themselves whether they want to join the litigation and decide in an unbiased manner on a lawyer to represent them.
81. As a result, the national measure taken in the case at hand must be regarded appropriate to attain the objective pursued and there can be no doubt that it must be considered suitable for securing the attainment of this objective.
82. Regarding the question of less restrictive measures, the Liechtenstein Government would like to repeat that every commercial communication, which could possibly be covered by §35 of the Code of Conduct, is assessed on a case by case basis by the Liechtenstein Lawyers Association.
83. If the Liechtenstein Chamber of Lawyers concludes that a commercial communication could possibly breach §35 of the Code of Conduct, the respective lawyer is contacted and the matter is informally discussed. The lawyer or law firm is then given the opportunity to correct the alleged breach of §35 of the Code of Conduct if possible.
84. Solely if no agreement can be reached, the Liechtenstein Chamber of Lawyers takes formal action respectively initiates disciplinary proceedings before the Court of Appeal.
85. Taking into account these arguments, the Liechtenstein Government is of the opinion that the measures specified in §35(1)(c) of the Code of Conduct are suitable for securing the attainment of the objective and that no less restrictive measures are available.
86. Thus, the rule on commercial communication according to §35(1)(c) of the Code of Conduct must be regarded as being non-discriminatory, justified by overriding reasons and proportionate. **Therefore, such a provision as defined in the Code of Conduct and applied accordingly by the Liechtenstein Chamber of Lawyers is not precluded by the Services Directive.**

V. Conclusion

87. Following the above observations, the Liechtenstein Government considers that the questions referred to the EFTA Court for an advisory opinion should be answered as follows

1. **Directive 2006/123/EC on services in the internal market does not preclude a provision such as §35(1)(c) of the Code of Conduct of the Liechtenstein Chamber of Lawyers.**
2. **Article 24(1) of Directive 2006/123/EC does not exclude a provision prohibiting lawyers from, on their own initiative, contacting by letter potential clients who were not previously their customers, after ascertaining their personal addresses, and from offering them their services, in particular by bringing an action for damages in a case of damage affecting them as best only as investors, if such a provision does not result in an indistinct and general prohibition of commercial communication.**

On behalf of the Liechtenstein Government




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