Subject: Reasoned Opinion - Infringement No 2013/2192

Please find attached a reasoned opinion addressed to Ireland in accordance with Article 258 TFEU.

For the Secretary-General

Robert ANDRECS

Encl. C(2019) 546 final
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REASONED OPINION

addressed to Ireland on account of the incompatibility of certain restrictions under Irish Law on commercial communications by lawyers with European Union Law, in particular Article 24 of Directive 2006/123/EC, under Article 258 of the Treaty on the Functioning of the European Union.
REASONED OPINION

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1. Statement of facts

In the 2012 Communication on implementation of Directive 2006/123/EC, the Commission announced a "zero-tolerance" policy for non-compliance with unequivocal obligations under that Directive, including total prohibition of commercial communications for regulated professions, in contravention of its Article 24.

Ireland was one of the Member States identified as having kept such prohibition for the legal profession.

In letters dated 16 November 2012 and 20 November 2012 transmitted via EU pilot, file number 4217/12/MARK, the services of the Commission asked the Irish government for information concerning the restrictions on advertising by legal practitioners in Ireland and, in particular, whether the proposed new legal framework for lawyers (the Legal Services Regulation Bill 2011 – Bill 58 of 2011) could ensure that lawyers can advertise in all forms of commercial communication with the proviso that the envisaged Legal Services Regulatory Authority could regulate on form, content and size if the regulations were justified and proportionate for ensuring the independence, dignity and integrity of the profession as well as the professional secrecy necessary in its practice. The Commission requested the text of the draft legislation and the timetable for its adoption.

In its reply received on 29 January 2013 the Ministry of the Department of Justice and Equality confirmed that it was the intention of the new legal framework for lawyers to allow all lawyers, including barristers, to advertise their services and accepted that section 123 of the draft bill could be clearer in establishing that the Legal Services Regulatory Authority could regulate only within the confines of reasonable and proportionate restrictions. It drafted amendments accordingly.

The Commission was not satisfied with these amendments which it believed could still be interpreted as restricting advertising in terms of its form. In its reply on 20 February 2013, the Commission also asked for a firm schedule of the legislative process of the Legal Services Regulation Bill.

The Ministry of the Department of Justice and Equality in its reply received on 12 March 2013 expressed its understanding and agreement with the Commission's view that the wording of certain aspects of the provision could lead to a wide restriction on the "form" of advertising. However, it made clear that the Legal Regulatory Authority should have

1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on implementation of the Services Directive "A partnership for new growth in services 2012-2015" (COM(2012) 261 final)

the power to regulate the form and content of advertising for the purposes of consumer protection and for the protection of the reputation of legal professionals. Finally, it said it was not possible to provide a "firm schedule" since the progress of the bill depended upon political priorities but the objective was to get the Bill enacted by the end of 2013.

The Commission was not satisfied with the reply, including Ireland’s failure to provide a clear and firm timetable for the adoption of the Legal Services Regulation Bill 2011. As a consequence, a Letter of Formal Notice was sent on 21 November 2013 inviting the Irish government under Article 258 of the Treaty on the Functioning of the European Union to submit, within two months, its observations on its failure to provide a clear and firm timetable for the adoption of the Legal Services Regulation Bill 2011 and to provide certainty on removal of restrictions, particularly with regard to the types of media that may be used for the purposes of advertising.

In a letter dated 19 February 2014 the Irish authorities replied to the letter of formal notice providing the Commission with an update on the progress of the Legal Services Regulation Bill 2011 in the legislature, confirming that the Bill had completed the Committee Stage at the Dáil on 12 February 2014 and advising that in light of this the Bill could be enacted before the summer, with the Legal Services Regulatory Authority due to become operational by the end of 2014.

The Irish authorities also stated that Section 123 of the Legal Services Regulation Bill (the section which at the time concerned advertising) provided for a workable solution for regulating professional advertising by legal practitioners and making Irish law compliant with Article 24 of Directive 2006/123/EC.

The Irish authorities understood Article 24(2) of Directive 2006/123 EC as including the duties of barristers and solicitors in law and in practice to the courts and to their clients. According to them, this is the legal framework within which the regulation of the advertising by the legal profession must be assessed.

Regarding barristers, the Irish authorities acknowledged that the Irish legal framework in place at the time governing advertising by barristers as not being in compliance with Article 24 of Directive 2006/123/EC.

As far as solicitors were concerned, the Irish authorities added that the then applicable rules did not impose a total ban on any form of commercial communication.

Nevertheless, the Irish authorities acknowledged the need to change the legal framework for advertising by both barristers and solicitors in order to comply with Article 24 of Directive 2006/123/EC and admitted further changes of the draft Section 123 of the Legal Services Regulation Bill annexed to the reply to the Letter of Formal Notice could be required to that end.

The Commission did not consider the proposed text for Section 123 of the Legal Services Regulation Bill, attached to the reply of the Irish authorities dated 19 February 2014, compliant with Article 24 of Directive 2006/123/EC. Furthermore, the Legal Services Regulation Bill 2011, which was initially scheduled for adoption by the summer of 2014, was delayed. In view of this the Commission issued a complementary letter of Formal Notice on 17 October 2014 drawing the Irish government's attention to the incompatibility of restrictions under Irish law on commercial communications by solicitors as well as by barristers with European Union law, in particular Article 24 of Directive 2006/123/EC.
In its reply dated 19 December 2014 the Irish authorities referred to informal contacts with the Commission on reaching a compromise text (then Section 151 of the Legal Services Regulation Bill) compatible with Article 24 of Directive 2006/123/EC, which the Irish authorities attached to their reply.

The Irish authorities admitted that the Bill had faced several delays but asserted that its implementation was an ongoing priority for the Irish government and the intention was for it to be enacted as soon as possible with the new bodies established in the first half of 2015. The authorities asked the Commission for a little more time before taking any further steps in relation to infringement proceedings.

Pursuant to informal contacts between the Commission services and the Irish authorities, the draft legal text was further amended.

In a letter of 22 May 2015, the Irish authorities renewed assurances and the commitment of its government to bring forward and to adopt the Legal Services Regulation Bill by the end of 2015, as well as to establish the Legal Services Regulatory Authority without delay.

The Legal Services Regulation Bill passed both houses of Parliament on 22 December 2015 and was signed into law by the President on 30 December 2015, as the Legal Services Regulation Act 2015 (Number 65 of 2015).

In an administrative letter dated 13 July 2016 the Commission welcomed the adoption of the Legal Services Regulation Act and confirmed the compatibility of Section 218 (on advertising of legal services) with European Union law, notably Article 24 of Directive 2006/123/EC. However, it drew attention to reports that the Law Society is continuing to enforce regulations on solicitor's put in place under previous legislation in a manner inconsistent with Section 218 of the new Legal Services Regulation Act. The Commission notified the Irish authorities that the closure of this infringement case can only happen once the regulations contrary to Article 24 of Directive 2006/123/EC cease to be applied in the Irish jurisdiction. The Commission asked the Irish authorities to clarify whether, under Irish law, previous regulations must be expressly replaced before its provisions, contrary to newly approved laws, cease to apply. If this were the case, the Commission asked the Irish authorities for a timetable for the approval of new regulations to be introduced under Section 218 of the Legal Services Regulation Act.

On 25 July 2016 the Bar of Ireland adopted a new Code of Conduct, replacing the one adopted on 23 July 2014 which had formed the legal base for the infringement procedure until that date. The new Code, which came into force the same day of adoption, took into account Section 218 of the new Legal Services Regulation Act.

Shortly thereafter, the Irish authorities replied in a letter dated 28 July 2016 to the query of the Commission on whether previous regulations had to be expressly replaced before the provisions of the new Legal Services Regulation Act could be applied, confirming that Section 218 of the new Legal Services Regulation Act 2015 would not come into force until the existing advertising provisions for solicitors are repealed under section 5 of the Legal Services Regulation Act. In order to avoid a regulatory gap, this would only happen once new advertising regulations have been put in place by the new Regulatory Authority, in consultation with stakeholders as required by the Legal Services Regulation Act. The Irish authorities asserted that it was their intention to carry out a phased roll out of the current advertising provisions by the end of 2016, after establishment day of the
Legal Services Regulatory Authority, scheduled for the 1 October 2016. The reply from Irish authorities made no mention to the new Code of Conduct for barristers and to the applicability of Section 218 of the new Legal Services Regulation Act regarding advertising by barristers, in accordance with section 6.13 of that code.

The Legal Services Regulatory Authority was established on 1 October 2016.

Pursuant to informal exchanges with the Commission services, the Irish authorities reported, in a letter dated 16 February 2017, the commencement of sections 118 to 120 of the Act, complying with statutory deadlines for the completion of public consultations and reports by the new Regulatory Authority, on matters other than advertising rules. Preparatory work was reported to be ongoing to launch the necessary stakeholder consultations ahead of drafting regulations to commence section 123 on advertising of legal services; adoption of the new regulations was then announced for mid-2017, after consultation with the relevant Commission services.

In a letter dated 13 March 2017 the Commission made a request to the Irish authorities for a detailed calendar for the preparation of the draft implementation regulations and asked to be notified in due time of the draft implementing legislation in order to be able to ensure conformity with European Union law.

In an e-mail reply sent on 3 May 2017 the Irish authorities informed the Commission that they were getting to the point where draft regulations would be drafted but did not provide the Commission with the draft regulations or an updated detailed calendar for implementation of section 218 of the Legal Services Regulation Act.

In April 2018 the first strategic plan of the Legal Services Regulatory Authority was published, scheduling work laying the foundations to subsequently develop regulations in relation to advertising of legal services for the period of 2018-2020.

Pursuant to further informal exchanges with the Commission services, the Irish authorities reported, in a letter dated 17 September 2018, that, before work on drafting regulations for section 218 of the Legal Services Regulation Act can start, a new public complaints system will have to be put in place; this system is scheduled to come into operation by the second quarter of 2019.

In view of the considerable and recurrent delays in bringing Irish legislation governing advertising by legal practitioners in line with Article 24 of Directive 2006/123/EC and the absence of a firm calendar for implementation of Section 218 of the new Legal Services Regulation Act 2015, not yet in force, the Commission considers it necessary to maintain its position as described in the letter of formal notice regarding the legislation currently in force in Ireland governing advertising by legal practitioners in general and solicitors in particular.

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2. **Law**

I. **Irish national law**

Section 218 of the Legal Services Regulation Act 2015, adopted in December 2015, provides for advertising of legal services as follows:

"218. (1) No professional code shall operate to prevent—

(a) a legal practitioner from advertising his or her legal services,

(b) a legal partnership, a multi-disciplinary practice or a limited liability partnership from advertising their legal services, or

(c) a group of legal practitioners, who share a facility, premises or cost of practice, from advertising themselves as such a group.

(2) The Authority may make regulations in relation to the advertising of legal services, including in relation to the information that may be contained in advertisements published or caused to be published by legal practitioners in relation to legal services they provide and any areas of law to which those services relate.

(3) Before making regulations under subsection (2), the Authority shall consult, in such manner as it considers appropriate, with—

(a) a professional body, the members of which will be subject to the regulations when made, and

(b) such other interested parties, including legal practitioners who are not members of a body referred to in paragraph (a) who will be subject to the regulations when made, as the Authority considers appropriate.

(4) Regulations made under subsection (2) may not restrict the advertising of legal services unless such restriction is—

(a) necessary for—

(i) the protection of the independence, dignity and integrity of the legal profession, and

(ii) an overriding reason relating to the public interest,

and

(b) non-discriminatory and proportionate.

(5) Without prejudice to the generality of subsection (2), regulations made under that subsection may—

(a) specify the category or categories of legal practitioner to whom such regulations apply,
(b) make provision in relation to advertisements that may be published or caused to be published by or on behalf of a legal practitioner, including provision in respect of their content and size,

(c) provide for the manner in which the Authority is to determine whether any particular advertisement published or caused to be published by a legal practitioner is in contravention of this section or any regulations under this section, and

(d) restrict the publication by or on behalf of a legal practitioner of any advertisement which in the opinion of the Authority—

(i) is likely to bring the legal profession into disrepute,

(ii) is in bad taste,

(iii) reflects unfavourably on other legal practitioners,

(iv) is false or misleading in any material respect,

(v) is published in an inappropriate location,

(vi) subject to subsection (7), expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make claims for personal injuries or seek legal services in connection with such claims.

(6) A legal practitioner shall not publish or cause to be published an advertisement which does not comply with regulations made under subsection (2).

(7) Nothing in subsection (5)(d)(vi) shall be taken to authorise the Authority to impose a restriction on the inclusion in an advertisement published by or on behalf of a legal practitioner of the words "personal injuries" as part of the legal services provided by the legal practitioner.

(8) In this section—

"advertisement" means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a legal practitioner in relation to the provision by him or her of legal services, including any—

(a) brochure, notice, circular, leaflet, poster, placard, photograph, illustration, emblem, display, stationery, directory entry, article or statement for general publication,

(b) electronic address or any information provided by the legal practitioner that is accessible electronically,

(c) audio or video recording, or

(d) presentation, lecture, seminar or interview,
which is so intended but excluding a communication which is primarily intended to give information on the law;

"inappropriate location" means a hospital, clinic, doctor's surgery, funeral home, cemetery, crematorium or other physical location of a similar character."

a) Rules currently governing advertising by barristers

Notwithstanding the adoption of the Legal Services Regulation Act in December 2015, its Section 218 governing advertising of legal services has not yet been implemented through regulations made by the new Legal Services Regulatory Authority as referred to in Section 218(2) of the Act.

Irish barristers are still subject to rules approved by the professional association – the "Bar of Ireland" – which, in the exercise of its legal autonomy, regulates in a collective manner access to the profession and the exercise of services by barristers.

The "Code of Conduct for the Bar of Ireland", adopted by a general meeting of the Bar of Ireland on 23 July 2014, governing advertising by barristers under its section 6, was replaced by a new Code of Conduct on 25 July 2016, taking account of Section 218 of the new Legal Services Regulation Act regarding advertising by barristers as follows:

"6.13. (i) Barristers may only advertise in a manner prescribed by regulations made pursuant to s.218(2) of the Act of 2015.

(ii) Pending the making of such regulations as are referred to in s.218(2) of the Act of 2015, Barristers may only advertise in accordance with s.218(1) of the Act of 2015 and, if applicable, in accordance with such rules, regulations or guidelines as may be made by the Bar Council pertaining to advertising by Barristers.

(iii) Any such rules, regulations or guidelines as may be made by the Bar Council shall have due regard to the principles contained in s.218(1), s.218(4) and s.218(5) of the Act of 2015 and the provisions of this Code as may be appropriate."

"There are currently no further regulations adopted by the Bar of Ireland in order to govern advertisement by a barrister.

b) Rules currently governing advertising by solicitors

Section 71 of the "Solicitors Act 1954", introduced by the "Solicitors (Amendment) Act 2002" sets limitations on, and conditions to, the form, means, manner and content of advertising by solicitors:

"(2) A solicitor shall not publish or cause to be published an advertisement which—

(a) is likely to bring the solicitors' profession into disrepute,

(b) is in bad taste,

(...)

8
(g) does not comply with subsection (3), or regulations under subsection (5) or (6), of this section,

(h) expressly or impliedly refers to

(i) claims or possible claims for damages for personal injuries,

(ii) the possible outcome of claims for damages for personal injuries, or

(iii) the provision of legal services by the solicitor in connection with such claims,

(i) expressly or impliedly solicits, encourages or offers any inducement to any person or group or class of persons to make the claims mentioned in paragraph (h) of this subsection or to contact the solicitor with a view to such claims being made, or

(…) An advertisement published or caused to be published by a solicitor shall not include more than—

(a) the name, address (including any electronic address), telephone number, facsimile number, place or places of business of the solicitor and any reference to the location of information provided by the solicitor that is accessible electronically,

(b) particulars of the academic and professional qualifications and legal experience of the solicitor,

(c) subject to subsection (2) of this section, factual information on the legal services provided by the solicitor and on any areas of law to which those services relate,

(d) subject to any regulations under subsection (6) of this section, particulars of any charge or fee payable to the solicitor for the provision of any specified legal service,

and

(e) any other information specified in regulations under subsection (5) of this section.

(4) Without prejudice to paragraphs (h) and (i) of subsection (2) of this section, a solicitor may, where appropriate, include the words ‘personal injuries’ in any advertisement which contains factual information, pursuant to paragraph (c) of subsection (3) of this section, on the legal services provided by the solicitor or on any areas of law to which those services relate.

(5) Without prejudice to the generality of section 5 of this Act and subsection (1) of this section, the Society shall, with the consent of the Minister, make regulations to give effect to subsections (2), (3) and (4) of this section and, in particular—

(a) to make provision, having regard to those subsections, in relation to advertisements that may be published or caused to be published by a solicitor, including provision in respect of the manner of their publication and their form, content and size,

(b) to specify advertisements which, having regard to the manner of their publication or their form, content or size, would be in contravention of subsection (2) of this section,
(d) to provide for restrictions on a solicitor making, or causing to be made, unsolicited approaches to any person or group or class of persons with a view to being instructed to provide legal services,

(...)"

As authorised by Section 71(5) of the Solicitors Act 1954, the Law Society, the regulatory authority for solicitors in Ireland, has issued, prior to the adoption of the new Legal Services Regulation Act, several Regulations on advertising. Many of them replicate statutory law in the Solicitors Act, others further clarify concepts or deal with investigation and enforcement of applicable rules, while yet others supplement statutory limitations and conditions to the form, means, manner and content of advertising by solicitors:

- Regulation 5 contains a list of "other information" permitted by the regulations, such as hours of business, job descriptions, membership of organisations, reference to other clients (with the clients' consent) and other miscellaneous information;

- Regulation 6 prohibits advertising on any form of transport;

- Regulation 9(a) prohibits the inclusion of cartoons, dramatic or emotive words or pictures, while Regulation 9(b) restricts billboard advertising to the solicitor's name, address, telephone and fax numbers, place of business and the location of information provided by the solicitor that is electronically accessible;

As confirmed by the Irish authorities, in the absence of regulations made by the new Legal Services Regulatory Authority implementing Section 218 of the Legal Services Regulation Act 2015, these regulations and Section 71 of the Solicitors Act 1954 remain in place and applicable in full to this date.

II. EU Law - Directive 2006/123/EC

Article 24(1) of Directive 2006/123/EC requires Member States to remove all total prohibitions on commercial communications by regulated professions:

"I. Member States shall remove all total prohibitions on commercial communications by the regulated professions."

The legal profession is a regulated profession, as defined by Article 4(11) of Directive 2006/123/EC, since its access and exercise, and the use of its professional titles, are subject to the possession of specific professional qualifications, as defined by Article 3(1)(b) of Directive 2005/36/EC.

A "commercial communication" is defined by Article 4(12) of Directive 2006/123/EC as: "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 of 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."

A "total prohibition on commercial communications" includes not only prohibitions of all forms of commercial communications, but also prohibitions of a particular form of commercial communication, by whatever means, in whatever manner and with whichever content possible, as decided by the Court of Justice of the European Union (CJEU) on Case C-119/09.4

Article 24(2) of Directive 2006/123/EC obliges Member States to:

"[e]nsure 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."

3. Legal Assessment

a) On the Legal Services Regulation Act 2015 and advertising by barristers

Section 218 of the new Legal Services Regulation Act 2015 explicitly prohibits professional codes from restricting the advertising of legal practitioners. It allows for the new Legal Services Regulatory Authority to make regulations in relation to advertising with the proviso that it consults beforehand professional bodies and interested parties. Furthermore, these restrictions must be necessary for the protection of the independence, dignity and integrity of the legal profession, and an overriding reason relating to the public interest, and be non-discriminatory and proportionate. Section 218(5) further prescribes that the Authority may regulate the 'content' and 'size' of advertisements without prescribing a closed list of admissible information or allowing for the "manner" and "form" of the advertisement to be the object of subsequent regulation, as was the case in some drafts of the Legal Services Regulation Bill that did not make it into law, including the one analysed in the complementary letter of formal notice.

Section 218(5)(d) introduces further principles on the "content" of advertisements such as a prohibition of disrepute of the profession or other legal practitioners, bad taste, false, misleading advertisements or those encouraging/inducing claims for personal injuries, as well as, in relation to the "manner" of advertisement, a precisely worded ban on advertising in a closed list of so-called "inappropriate locations". All these restrictions, per se, seem justified and proportionate in light of Article 24 of Directive 2006/123/EC, in particular in relation to securing the independence, dignity and integrity of the profession, without prejudice to further scrutiny of compliance with EU law being required of the implementing regulations detailing the exact restrictions to be introduced in the future, as to their concrete necessity and proportionality, as well as their non-discriminatory nature, in light of that same Article 24 of Directive 2006/123/EC.

4 Judgment of 5 April 2011 in Société fiduciaire nationale d'expertise comptable, C-119/09, ECLI:EU:C:2011:208, paragraph 29. The case concerned in particular canvassing as a form of commercial communication, totally prohibited, at the time, for accountants in France.
It is the continued opinion of the Commission, as expressed during the pre-litigation stage, that Section 218 of the Legal Services Regulation Act 2015 is in compliance with EU law, in particular Article 24 of Directive 2006/123/EC.

Regarding advertising by barristers, the legal framework currently in force in Ireland no longer corresponds to the one described in the letters of formal notice. The new Code of Conduct for the Bar of Ireland has allowed, since 25 July 2016, for advertising as per its section 6.13. Section 6.13(ii) and (iii) of this Code currently allows for advertising by barristers in accordance with Section 218 of the Legal Services Regulation Act 2015, pending the making of regulations under Section 218 of this Act by the new Legal Services Regulatory Authority and in accordance with the rules, regulations or guidelines of the Bar of Ireland, if any. There are, to this date, no such rules, regulations or guidelines made, so it is clear that advertising by barristers is currently only specifically governed in Ireland by Section 218 of the 2015 Act. Given that, as mentioned above, Section 218 is in compliance with EU law, in particular Article 24 of Directive 2006/123/EC, the Commission is of the opinion that Ireland is, at this moment in time, not in breach of EU law in relation to its rules on advertising by barristers.

b) On the rules in force governing advertising by solicitors

However, it is undisputed by the Irish authorities that Section 218 of the Legal Services Regulation Act 2015 is not yet applicable to advertising by solicitors and that the legal framework currently in force governing advertising by those legal practitioners in Ireland remains as described in the complementary letter of formal notice.

- Rules prohibiting certain forms of commercial communications

As far as solicitors are concerned, section 71(5)(d) of the Solicitors Act 1954 allows the regulator to completely ban "unsolicited approaches", which in the context of advertising refers to direct marketing or canvassing.5

The Irish authorities, although admitting in their replies to both letters of formal notice that the rules on advertising by solicitors require amendment to ensure compliance with EU law, claimed, in their reply to the initial Letter of Formal Notice, that the currently applicable rules on advertising by solicitors do not impose a total ban on commercial communications under Article 24(1) of Directive 2006/123/EC.

However, the scope of Article 24 (1) of Directive 2006/123/EC covers not only bans on all forms of commercial communications but also a complete ban of a particular form of commercial communication a solicitor intends to use, by whatever means, in whatever manner and with whichever content possible.6

A total ban on "unsolicited approaches" should therefore be eliminated from Irish law governing advertising by solicitors.

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5 Judgment of 5 April 2011 in Société fiduciaire nationale d'expertise comptable, C-119/09, ECLI:EU:C:2011:208, dealt specifically with canvassing, declaring a total ban on that specific commercial communication practise to be contrary to Article 24(1) of Directive 2006/123/EC.

Similarly, Section 71(5)(a) and (b) of the Solicitors Act 1954, by allowing for regulations of the Law Society to provide for the "manner" and "form" of publication of advertisements, can be construed as allowing the regulator to completely ban entire forms of commercial communications, such as television advertising, by whatever means, in whatever manner and with whichever content possible. That provision, or its equivalent in the new legal framework under the Legal Services Regulation Act of 2015, should be drafted in such a way as to make it clear that the regulations to be adopted by the Law Society must not comprise a complete prohibition of an entire form of commercial communication.

- **Rules affecting the content of commercial communications**

Section 71(3) of the Solicitors Act 1954, together with Regulation 5 of the Law Society, prescribes the only information that can be included in an advertisement of services by solicitors. No other information can be provided. Irish law therefore contains a closed list of information items to be used. It should be noted that the information indicated in section 71(3)(a) of the Solicitors Act 1954 would appear to correspond to what, in Article 4(12) of Directive 2006/123/EC, is described as not constituting a commercial communication. It would therefore appear that the only information that may be included in a commercial communication is that set out in section 71(3)(b) to (e), as those categories are further specified in the Regulations adopted by the Law Society, and in particular Regulation 5.

In the first place, it should be noted that such a closed list of information may be construed as prohibiting certain forms of commercial communication which, by their very nature, are generally not limited to the prescribed information, such as sponsoring. Irish law therefore imposes a total prohibition on those forms of commercial communication, which is inadmissible under Article 24(1) of Directive 2006/123/EC, and should be eliminated.

In the second place, restrictions which affect the content of a commercial communication may be justified under Article 24(2) of Directive 2006/123/EC if there are overriding reasons of public interest such as the independence, dignity or integrity of the profession or the requirements of professional secrecy. However, to ban completely all content except for that which is allowed under the Law, by way of a closed list, is disproportionate and therefore in violation of Article 24(2) of Directive 2006/123/EC. Each particular prohibition on content must, on its own, be justified by an admissible overriding reason of public interest.

A blanket prohibition of all content except for that prescribed by law cannot be justified by overriding reasons of public interest, such as the independence, dignity or integrity of the profession or the requirements of professional secrecy, since much of the content thus prohibited (simply because it was not expressly foreseen in the law) does not pose any relevant problems. For example, advertising participation in a forthcoming legal debate is not part of the approved list and, as an advertising practice, does not present a problem in relation to overriding reasons of public interest particular to the legal profession.
As regards content irrespective of the means employed, even when the only information conveyed is that permitted by law, Regulation 9(a) prohibits any use of cartoons, dramatic or emotive words or pictures. These specific restrictions are not proportionate under Article 24(2) of Directive 2006/123/EC to meet the objectives justified by overriding reasons of public interest, such as the dignity and integrity of the profession.

There are already rules in place which prohibit advertisements in bad taste or likely to bring the profession into disrepute (notably Section 71(2)(a) and (b) of the Solicitors Act of 1954); to outlaw their use completely seriously undermines in a disproportionate manner the possibility of creative advertising, since not all cartoons, dramatic or emotive words or pictures will be in bad taste or likely to bring the profession into disrepute. Regulation 9(a) therefore goes beyond that which is necessary and suitable to attain the public policy objectives in question, and they should be eliminated.

- Rules pertaining to the means employed in commercial communications

If an advertisement is conveyed by means of a billboard, Regulation 9(b) of the Law Society limits the admissible information even further, reducing it to mere information on how to access the service but not allowing information about the service as such. As indicated above, simply providing information to enable direct access to the activity of the service provider in question is not considered to constitute a commercial communication, in accordance with Article 4(12)(a) of Directive 2006/123/EC. The restriction on content regarding advertising by way of billboards is therefore tantamount to a total prohibition of commercial communications by way of billboards.

Advertisement by posters on any transport vehicle is also entirely forbidden under Regulation 6 of the Law Society.

Such a restriction is disproportionate under Article 24(2) of Directive 2006/123/EC for the purpose of securing objectives justified by overriding reasons of public interest, such as the dignity and integrity of the profession, and should be eliminated, especially since there are already rules in place which prohibit advertisements in bad taste or likely to bring the profession into disrepute (notably Section 71(2)(a) and (b) of the Solicitors Act 1954) or which severely limit references for damages for personal injuries to mere factual information on the legal services provided (as per Sections 71(2)(h) and (i) and 71(4) of the Solicitors Act 1954).

Conformity of advertising on billboards or by posters on any transport vehicle with such rules on taste and reputation of the profession shall depend on the content and manner of publication. To completely outlaw such a form of advertising goes beyond that which is necessary and suitable to attain the public policy objectives in question.

Such a restriction may even be construed as a total prohibition of a whole form of commercial communication.

It is therefore contrary to Article 24 of Directive 2006/123/EC and should be eliminated accordingly.
FOR THESE REASONS

THE EUROPEAN COMMISSION

after giving Ireland the opportunity to submit its observations by letters dated 21 November 2013 (SG(2013)D/19141) and 17 October 2014 (SG(2014)D/15116), and in view of the replies of the Irish Government,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

under the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, by allowing for regulations of the Law Society to provide for the “manner” and “form” of publication of advertisement, by specifically prescribing, in a closed list, the admissible information to be included in an advertisement, by banning advertising content on billboards, by prohibiting any use of cartoons, dramatic or emotive words or pictures and by entirely forbidding the advertisement by posters on any transport vehicle

Ireland has failed to fulfil its obligations under Article 24 of Directive 2006/123/EC.

Pursuant to the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, the Commission invites Ireland to take the necessary measures to comply with this Reasoned Opinion within two months of receipt of this Opinion.

Done at Brussels, 24.1.2019

For the Commission

Elżbieta Bieńkowska
Member of the Commission