

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 31 January 2013 — Posteshop SpA — Divisione Franchising Kipoint v Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri

(Case C-52/13)

(2013/C 123/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Posteshop SpA — Divisione Franchising Kipoint

Defendants: Autorità Garante della Concorrenza e del Mercato, Presidenza del Consiglio dei Ministri

Question referred

With regard to the protection to be afforded to traders, is Directive 2006/114/EC⁽¹⁾ to be interpreted as referring to advertising that is misleading and at the same time based on unlawful comparison, or to two separate offences, each of which may be relevant in its own right, namely misleading advertising and unlawful comparative advertising?

⁽¹⁾ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ 2006 L 376, p. 21).

Action brought on 12 February 2013 — European Commission v Portuguese Republic

(Case C-76/13)

(2013/C 123/17)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade, G. Braun and L. Nicolae, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

The Commission claims that the Court of Justice should:

- declare that the Portuguese Republic has failed to comply with the judgment of the Court in Case C-154/09 *European Commission v Portuguese Republic* [2010] ECR I-127;
- order the Portuguese Republic to pay the Commission a periodic penalty payment of EUR 43 264,64 per day of its failure to comply with the judgment in Case C-154/09, from the date of delivery of the judgment in the present case until the defendant has complied in full with the judgment in Case C-154/09;
- order the Portuguese Republic to pay the Commission a fine of a fixed rate of EUR 5 277,3 per day of its failure to comply, from the date of delivery of the judgment in Case C-154/09 until:
 - the date of compliance with that judgment, in the event that the Court of Justice determines that the Portuguese Republic has complied with it before the judgment in the present case is delivered;
 - the date of delivery of the judgment in this case, in the event that it finds that the judgment in Case C-154/09 has not been complied with prior to the delivery of the judgment in the present case;
- order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese Republic is yet to designate the undertakings which are to provide the universal service in accordance with Articles 3(2) and 8(2) of the Universal Service Directive.⁽¹⁾ Moreover, the Portuguese Lei das Comunicações Eletrónicas (Law on electronic communications) still provides for the maintenance of all of the obligations set out in the basic concession rules for the provision of public telecommunications services approved by Decree-Law No 31/2003, pursuant to which the provision of the universal service is entrusted to PT Comunicações by means of a concession contract which is valid until 2025. For the purposes of the fine, the Commission proposes that the Court determine a coefficient of 7 on a scale of 1 to 20.

The infringement at issue jeopardises the attainment of the fundamental objectives of competition law in relation to the liberalisation of the telecommunications market, in addition to