

**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy)
lodged on 6 July 2017 — Enel Energia SpA v Autorità Garante della Concorrenza ed del Mercato and
Others**

(Case C-408/17)

(2017/C 338/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Enel Energia SpA

Defendants: Autorità Garante della Concorrenza ed del Mercato, Autorità per l'Energia Elettrica il Gas e il Sistema Idirco, Autorità per le Garanzie nelle Comunicazioni

Questions referred

1. Does the 'rationale' of 'general' Directive No 2005/29/EC,⁽¹⁾ namely that of providing a 'safety net' for consumer protection, and, in particular, recital 10, Article 3(4) and Article 5(3) of the directive preclude a national measure which brings within the scope of general Directive 2005/29/EC on improper commercial practices the evaluation of performance of the specific obligations laid down by sectoral Directives 2009/72/EC⁽²⁾ and 2009/73/EC⁽³⁾ for consumer protection, thereby excluding action by the sectoral authority — in this case the AEEGSI — to penalise infringements of the sectoral directive in all cases in which the prerequisites establishing an improper or unfair commercial practice may also be satisfied?
2. Must the speciality principle established by Article 3(4) of Directive 2005/29/EC be construed as governing relations between legislative systems (general systems and sectoral systems), or relations between provisions (general provisions and special provisions) or relations between independent authorities responsible for regulating and monitoring the relevant sectors?
3. Can the concept of 'conflict' in Article 3(4) of Directive 2005/29/EC be regarded as applicable only in circumstances in which there is a radical contradiction in law between the provisions of the legislation on improper commercial practices and the other provisions derived from EU law that govern specific aspects of commercial practices, or is it sufficient that the latter provisions lay down rules that differ from the provisions on improper commercial practices, such as to give rise to a conflict of laws in a specific case?
4. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?
5. Does the 'speciality' principle established in recital 10 and Article 3(4) of Directive 2005/29/EC, and Article 37 of Directive 2009/72/EC and Article 41 of Directive 2009/73/EC as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/29/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I to Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even where there are sectoral rules adopted to protect (such) consumers and based on provisions of EU law that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper/unfair practices'?

⁽¹⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2006 concerning unfair business — to — consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('unfair commercial practices directives') (OJ 2005 L 149, p. 22).

⁽²⁾ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

⁽³⁾ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94).