

Misleading advertising and comparative advertising (amend. Directive 84/450/EEC)

1991/0343(COD) - 19/03/1996 - Council position

The Council common position incorporates, in full or in part, six of the amendments accepted by the Commission in its amended proposal. The Council has, however, included modifications with a view in particular to completing harmonization for comparative advertising, a more precise reference to the provisions of Directive 84/450 on misleading advertising and to specifying the conditions for allowing (and disallowing) comparative advertising with regard to the comparison. Thus, as far as the comparison is concerned, comparative advertising is permitted when the following conditions are met: - it is not misleading in the sense of Directive 84/450/EEC; - it compares goods or services meeting the same needs or intended for the same purpose; - it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price; - it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor; - it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services or activities of a competitor; - for products with designation of origin, it relates in each case to products with the same designation; - it does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or a designation of origin of competing products. The common position also lays down the conditions which must be respected for any comparison referring to a special offer. In view of the thoroughgoing nature of the planned harmonization, the Member States will not be permitted, with regard to comparative advertising, to retain or adopt provisions ensuring more extensive protection. However, the provisions of the Directive do not prevent Member States from maintaining or introducing, in compliance with the provisions of the Treaty, advertising bans regarding certain goods or services.