

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

1991/0343(COD) - 06/10/1997 - Final act

**OBJECTIVE:** the new Directive seeks to authorise, under certain conditions, comparative advertising at Community level and to coordinate its application with a view to establishing the Internal Market, while at the same time helping provide consumers with better information and stimulating competition.

**COMMUNITY MEASURE:** European Parliament and Council Directive 97/55/EC, amending Directive 84/450/EEC on misleading advertising so as to include comparative advertising. **CONTENT:** under the terms of the Directive, comparative advertising is defined as being any form of advertising which, explicitly or implicitly, identifies a competitor or the goods or services being offered by a competitor.

Comparative advertising is lawful 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; - it does not present goods or services as being an imitation or replica of goods or services with a registered trademark or trade name. In addition, the measures proposed under Directive 84/450/EEC concerning the control of misleading advertising are equally applicable to comparative advertising. This primarily involves allowing persons or organisations having a legitimate interest in banning misleading advertising or comparative advertising to take legal action against the advertising in question and/or to bring the advertising before a competent administrative body, either to obtain a ruling on the complaint or to commence appropriate legal proceedings. It should also be noted that the Member States are not 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, in compliance with the provisions of the Treaty, from retaining or introducing advertising bans regarding certain goods or services. **ENTRY INTO FORCE:** 23/04/2000