





**DIRECTIVE 97/55/EC OF EUROPEAN PARLIAMENT AND OF  
THE COUNCIL**

**of 6 October 1997**

**amending Directive 84/450/EEC concerning misleading advertising  
so as to include comparative advertising**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and  
in particular Article 100a thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social  
Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189b of  
the Treaty <sup>(3)</sup>, in the light of the joint text approved by the Conciliation  
Committee on 25 June 1997,

- (1) Whereas one of the Community's main aims is to complete the  
internal market; whereas measures must be adopted to ensure the  
smooth running of the said market; whereas the internal market  
comprises an area which has no internal frontiers and in which  
goods, persons, services and capital can move freely;
- (2) Whereas the completion of the internal market will mean an ever  
wider range of choice; whereas, given that consumers can and  
must make the best possible use of the internal market, and that  
advertising is a very important means of creating genuine outlets  
for all goods and services throughout the Community, the basic  
provisions governing the form and content of comparative adver-  
tising should be uniform and the conditions of the use of  
comparative advertising in the Member States should be  
harmonized; whereas if these conditions are met, this will help  
demonstrate objectively the merits of the various comparable  
products; whereas comparative advertising can also stimulate  
competition between suppliers of goods and services to the  
consumer's advantage;
- (3) Whereas the laws, regulations and administrative provisions of  
the individual Member States concerning comparative adver-  
tising differ widely; whereas advertising reaches beyond the  
frontiers and is received on the territory of other Member  
States; whereas the acceptance or non-acceptance of comparative  
advertising according to the various national laws may constitute  
an obstacle to the free movement of goods and services and  
create distortions of competition; whereas, in particular, firms  
may be exposed to forms of advertising developed by  
competitors to which they cannot reply in equal measure;  
whereas the freedom to provide services relating to comparative  
advertising should be assured; whereas the Community is called  
on to remedy the situation;
- (4) Whereas the sixth recital of Council Directive 84/450/EEC of 10  
September 1984 relating to the approximation of laws, regu-  
lations and administrative provisions of the Member States

<sup>(1)</sup> OJ C 180, 11. 7. 1991, p. 14, and OJ C 136, 19. 5. 1994, p. 4.

<sup>(2)</sup> OJ C 49, 24. 2. 1992, p. 35.

<sup>(3)</sup> Opinion of the European Parliament of 18 November 1992 (OJ C 337, 21.  
12. 1992, p. 142), Common Position of the Council of 19 March 1996 (OJ C  
219, 27. 7. 1996, p. 14) and Decision of the European Parliament of 23  
October 1996 (OJ C 347, 16. 11. 1996, p. 69), Decision of the European  
Parliament of 16 September 1997 and Decision of the Council of 15  
September 1997.

▼B

concerning misleading advertising<sup>(4)</sup> states that, after the harmonization of national provisions against misleading advertising, ‘at a second stage ..., as far as necessary, comparative advertising should be dealt with, on the basis of appropriate Commission proposals’;

- (5) Whereas point 3 (d) of the Annex to the Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy<sup>(5)</sup> includes the right to information among the basic rights of consumers; whereas this right is confirmed by the Council Resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy<sup>(6)</sup>, point 40 of the Annex, which deals specifically with consumer information; whereas comparative advertising, when it compares material, relevant, verifiable and representative features and is not misleading, may be a legitimate means of informing consumers of their advantage;
- (6) Whereas it is desirable to provide a broad concept of comparative advertising to cover all modes of comparative advertising;
- (7) Whereas conditions of permitted comparative advertising, as far as the comparison is concerned, should be established in order to determine which practices relating to comparative advertising may distort competition, be detrimental to competitors and have an adverse effect on consumer choice; whereas such conditions of permitted advertising should include criteria of objective comparison of the features of goods and services;
- (8) Whereas the comparison of the price only of goods and services should be possible if this comparison respects certain conditions, in particular that it shall not be misleading;
- (9) Whereas, in order to prevent comparative advertising being used in an anti-competitive and unfair manner, only comparisons between competing goods and services meeting the same needs or intended for the same purpose should be permitted;
- (10) Whereas the international conventions on copyright as well as the national provisions on contractual and non-contractual liability shall apply when the results of comparative tests carried out by third parties are referred to or reproduced in comparative advertising;
- (11) Whereas the conditions of comparative advertising should be cumulative and respected in their entirety; whereas, in accordance with the Treaty, the choice of forms and methods for the implementation of these conditions shall be left to the Member States, insofar as those forms and methods are not already determined by this Directive;
- (12) Whereas these conditions should include, in particular, consideration of the provisions resulting from Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs<sup>(7)</sup>, and in particular Article 13 thereof, and of the other Community provisions adopted in the agricultural sphere;
- (13) Whereas Article 5 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States

<sup>(4)</sup> OJ L 250, 19. 9. 1984, p. 17.

<sup>(5)</sup> OJ C 92, 25. 4. 1975, p. 1.

<sup>(6)</sup> OJ C 133, 3. 6. 1981, p. 1.

<sup>(7)</sup> OJ L 208, 24. 7. 1992, p. 1.

▼B

relating to trade marks<sup>(8)</sup> confers exclusive rights on the proprietor of a registered trade mark, including the right to prevent all third parties from using, in the course of trade, any sign which is identical with, or similar to, the trade mark in relation to identical goods or services or even, where appropriate, other goods;

- (14) Whereas it may, however, be indispensable, in order to make comparative advertising effective, to identify the goods or services of a competitor, making reference to a trade mark or trade name of which the latter is the proprietor;
- (15) Whereas such use of another's trade mark, trade name or other distinguishing marks does not breach this exclusive right in cases where it complies with the conditions laid down by this Directive, the intended target being solely to distinguish between them and thus to highlight differences objectively;
- (16) Whereas provisions should be made for the legal and/or administrative means of redress mentioned in Articles 4 and 5 of Directive 84/450/EEC to be available to control comparative advertising which fails to meet the conditions laid down by this Directive; whereas according to the 16th recital of the Directive, voluntary control by self-regulatory bodies to eliminate misleading advertising may avoid recourse to administrative or juridical action and ought therefore to be encouraged; whereas Article 6 applies to unpermitted comparative advertising in the same way;
- (17) Whereas national self-regulatory bodies may coordinate their work through associations or organizations established at Community level and inter alia deal with cross-border complaints;
- (18) Whereas Article 7 of Directive 84/450/EEC allowing Member States to retain or adopt provisions with a view to ensuring more extensive protection for consumers, persons carrying on a trade, business, craft or profession, and the general public, should not apply to comparative advertising, given that the objective of amending the said Directive is to establish conditions under which comparative advertising is permitted;
- (19) Whereas a comparison which presents goods or services as an imitation or a replica of goods or services bearing a protected trade mark or trade name shall not be considered to fulfil the conditions to be met by permitted comparative advertising;
- (20) Whereas this Directive in no way affects Community provisions on advertising for specific products and/or services or restrictions or prohibitions on advertising in particular media;
- (21) Whereas, if a Member State, in compliance with the provisions of the Treaty, prohibits advertising regarding certain goods or services, this ban may, whether it is imposed directly or by a body or organization responsible under the law of that Member State for regulating the exercise of a commercial, industrial, craft or professional activity, be extended to comparative advertising;
- (22) Whereas Member States shall not be obliged to permit comparative advertising for goods or services on which they, in compliance with the provisions of the Treaty, maintain or introduce bans, including bans as regards marketing methods or advertising which targets vulnerable consumer groups; whereas Member States may, in compliance with the provisions of the Treaty, maintain or introduce bans or limitations on the use of comparisons in the advertising of professional services,

<sup>(8)</sup> OJ L 40, 11. 2. 1989, p. 1. Directive as last amended by Decision 92/10/EEC (OJ L 6, 11. 1. 1992, p. 35).