

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) <a href="#">1991/0343(COD)</a> Directive	Procedure completed
Misleading advertising and comparative advertising (amend. Directive 84/450/EEC)  Repealed by <a href="#">2006/0070(COD)</a> See also <a href="#">2008/2114(INI)</a>	
Subject 4.60.02 Consumer information, advertising, labelling	

Key players			
European Parliament	Former committee responsible		
	<a href="#">ENVI</a> Environment, Public Health and Consumer Protection	PPE <a href="#">OOMEN-RUIJTEN Ria</a>	27/07/1994
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">General Affairs</a>	<a href="#">2027</a>	15/09/1997
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">1986</a>	27/01/1997
	<a href="#">Agriculture and Fisheries</a>	<a href="#">1908</a>	19/03/1996
	Consumers	<a href="#">1881</a>	09/11/1995

Key events			
28/05/1991	Legislative proposal published	COM(1991)0147	Summary
08/10/1991	Committee referral announced in Parliament, 1st reading		
25/09/1992	Vote in committee, 1st reading		
25/09/1992	Committee report tabled for plenary, 1st reading	A3-0283/1992	
17/11/1992	Debate in Parliament		Summary
18/11/1992	Decision by Parliament, 1st reading	T3-0654/1992	Summary
24/11/1993	Vote in committee, 1st reading		
24/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0365/1993	
02/12/1993	Decision by Parliament, 1st reading	T3-0683/1993	Summary
21/04/1994	Modified legislative proposal published	COM(1994)0151	Summary

19/03/1996	Council position published	<a href="#">04340/3/1996</a>	Summary
04/07/1996	Committee referral announced in Parliament, 2nd reading		
09/10/1996	Vote in committee, 2nd reading		Summary
09/10/1996	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0314/1996</a>	
22/10/1996	Debate in Parliament		
23/10/1996	Decision by Parliament, 2nd reading	T4-0519/1996	Summary
27/01/1997	Parliament's amendments rejected by Council		
25/06/1997	Formal meeting of Conciliation Committee		Summary
25/06/1997	Final decision by Conciliation Committee		
06/08/1997	Joint text approved by Conciliation Committee co-chairs	<a href="#">3619/1997</a>	
10/09/1997	Report tabled for plenary, 3rd reading	<a href="#">A4-0272/1997</a>	
15/09/1997	Debate in Parliament		Summary
15/09/1997	Decision by Council, 3rd reading		Summary
16/09/1997	Decision by Parliament, 3rd reading	T4-0422/1997	Summary
06/10/1997	Final act signed		
06/10/1997	End of procedure in Parliament		
23/10/1997	Final act published in Official Journal		

### Technical information

Procedure reference	1991/0343(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Repealed by <a href="#">2006/0070(COD)</a> See also <a href="#">2008/2114(INI)</a>
Legal basis	EC before Amsterdam E 100A
Stage reached in procedure	Procedure completed
Committee dossier	CODE/4/08610

### Documentation gateway

Legislative proposal	<a href="#">COM(1991)0147</a> <a href="#">OJ C 180 11.07.1991, p. 0014</a>	28/05/1991	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES1510/1991</a> <a href="#">OJ C 049 24.02.1992, p. 0035</a>	18/12/1991	ESC	Summary
Committee report tabled for plenary, 1st	A3-0283/1992	25/09/1992	EP	

reading/single reading		<a href="#">OJ C 305 23.11.1992, p. 0007</a>			
Text adopted by Parliament, 1st reading/single reading		T3-0654/1992 <a href="#">OJ C 337 21.12.1992, p. 0078-0142</a>	18/11/1992	EP	Summary
Reconsultation		COM(1993)0570	10/11/1993	EC	
Committee final report tabled for plenary, 1st reading/single reading		A3-0365/1993 <a href="#">OJ C 342 20.12.1993, p. 0003</a>	24/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading		T3-0683/1993 <a href="#">OJ C 342 20.12.1993, p. 0015-0033</a>	02/12/1993	EP	Summary
Modified legislative proposal		COM(1994)0151 <a href="#">OJ C 136 19.05.1994, p. 0004</a>	21/04/1994	EC	Summary
Council position		<a href="#">04340/3/1996</a> <a href="#">OJ C 219 27.07.1996, p. 0014</a>	19/03/1996	CSL	Summary
Commission communication on Council's position		SEC(1996)1169	03/07/1996	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A4-0314/1996</a> <a href="#">OJ C 347 18.11.1996, p. 0006</a>	09/10/1996	EP	
Text adopted by Parliament, 2nd reading		T4-0519/1996 <a href="#">OJ C 347 18.11.1996, p. 0051-0069</a>	23/10/1996	EP	Summary
Commission opinion on Parliament's position at 2nd reading		COM(1996)0700 <a href="#">OJ C 032 01.02.1997, p. 0007</a>	13/12/1996	EC	Summary
Joint text approved by Conciliation Committee co-chairs		<a href="#">3619/1997</a>	06/08/1997	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading		<a href="#">A4-0272/1997</a> <a href="#">OJ C 304 06.10.1997, p. 0008</a>	10/09/1997	EP	
Text adopted by Parliament, 3rd reading		T4-0422/1997 <a href="#">OJ C 304 06.10.1997, p. 0023-0031</a>	16/09/1997	EP	Summary

## Final act

[Directive 1997/55](#)  
[OJ L 290 23.10.1997, p. 0018](#) Summary

[Corrigendum to final act 31997L0055R\(03\)](#)  
[OJ L 317 03.12.2015, p. 0042](#)

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

The purpose of this proposal is to harmonise the laws on comparative advertising in order to ensure that the consumer's right to information is respected and that appropriate safeguards exist to avoid conflicts between advertisers due to incompatible national laws. The proposal will not permit Member States to retain or adopt provisions which would ensure more extensive protection in the area of comparative advertising, unlike misleading advertising for which Member States are permitted to adopt stricter legislation. ?

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

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

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

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The European Parliament adopted the report by Mrs Oomen-Ruijten. Note: the amendment tabled by Alain Pompidou adopted by 162 votes to 104 with 7 abstentions calling for the provisions on comparative advertising not to be applied to comparative tests conducted by university researchers or laboratories on different pharmaceutical therapeutic treatments where the scientific relevance had been established beforehand. In adopting this report, the European Parliament gave a 'controlled' go-ahead to this form of advertising. Most of its amendments were intended to channel more effectively the use of this form of advertising and to contain it subject to strict criteria. Comparative advertising would be allowed only if it objectively compared the material, relevant, at all times verifiable, objectively determinable, fairly chosen and representative features of competing goods or services. A trade mark or trade name in an advertisement could be used only where necessary to identify the competitor's goods, services or activities. Any reference to the competitor's person or circumstances was prohibited. Any comparison presenting products or services as imitations or copies of products or services already protected by trade marks, trade names or designations of origin was also prohibited. Lastly, reference to or reproduction of the results of comparative tests were permitted only if the test had been carried out by a recognised independent body, consumer associations or organisations. ?

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

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The Commission's amended proposal incorporated certain elements of the initial proposal: - preservation of the title of the proposal and of the definition of comparative advertising; - preservation of the initial text that extended the scope of the provisions applied to misleading advertising to included comparative advertising; - validity of the voluntary control of misleading advertising by self-regulatory bodies; - preservation of the principle of reversing the burden of proof. However, the Commission included the following amendments: - removal of the provisions concerning comparative tests; - stricter limits on comparative advertising: . extending the criteria in order to ensure that comparative advertising was fair; . a comparative reference to a service should only relate to the characteristics of the service itself and not to the intellectual qualities of the service provider, which should not themselves be subject to any comparison; . the "objective truth", a guiding principle of the design and use of comparative advertising, should also incorporate the full "relevance" of the assertion at the time when it is disseminated, particularly when products and services are on special offer or are a limited offer; .finally, in areas where advertising is subject to partial bans or to restrictions (medical products, tobacco, foodstuffs), comparative advertising must also be taken into consideration. ?

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

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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.?

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

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The Commission accepted the amendments introduced by the Council and supported the common position. However, it wished to clarify its interpretation of article 7, point 4 of the common position, i.e. that if national legislation banned advertising of certain products or services (irrespective of which), comparative advertising of those products and services would also be banned.?

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

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The committee to adopted an amendment which seeks to ban the comparative advertising of goods or services which were imitations or replicas of other goods or services with a registered trade mark or trade name. With this amendment and others, the committee adopted the draft recommendation (codecision procedure, second reading) prepared by Mrs Ria OOMEN-RUIJTEN on the Council's common position on the inclusion of comparative advertising within the scope of Directive 84/450/EEC on misleading advertising. Comparative advertising, sometimes known as "knocking copy", is advertising in which a vendor sets the supposedly superior merits of his own product or service against the allegedly lesser quality of rival products or services - often on the basis of test results. Washing powder is perhaps the best known example. One amendment seeks to ban comparative advertising where it is against the codes of practice of professional bodies such as lawyers' organizations. The committee also wants comparative quality tests to be cited in advertisements "only if the person who has carried out the tests gives his express consent". However, the advertiser must still accept responsibility for the reliability of such tests as if they had

been performed by himself or under his direction. The committee also wants to encourage the voluntary control of misleading or comparative advertising by self-regulatory bodies. An amendment states: "The voluntary control of misleading or comparative advertising, where applicable, shall be carried out pursuant to the principle of subsidiarity by the national self-regulatory bodies; a European self-regulatory umbrella alliance shall coordinate this work and shall receive cross-border complaints." ?

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

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In adopting the report by Mrs Ria OOMEN-RUIJTEN (PPE, NL), Parliament approved, with amendments, the common position of the Council on the amendment of the 1984 Directive concerning misleading advertising so as to include comparative advertising. Parliament called for comparative advertising to be prohibited: - where it presents a good or service as an imitation or replica of a good or service bearing a registered trade mark or trade name; - where it clashes with the codes of ethics of such professional bodies as the Bar associations. The EP also proposed that reference to the results of comparative tests should be permitted in advertising only if the person who has carried out the tests gives his express consent. In such cases the advertiser should accept responsibility for the test as if it had been performed by himself. Finally, the EP wished to encourage the voluntary control of misleading or comparative advertising by self-regulatory bodies and it proposed that pursuant to the principle of subsidiarity, the voluntary control of misleading or comparative advertising, where applicable, should be carried out by national self-regulatory bodies; a European body would coordinate this work and deal with cross-border complaints. ?

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

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The Commission amended its proposal by incorporating 8 of the 16 amendments adopted by the European Parliament at second reading. The amendments introduced by the Commission seek to: - delete a recital requiring conditions for comparative advertising to be cumulative and to be adhered to in full; - ban comparative advertising: . which discredits or denigrates the distinguishing marks or circumstances of a competitor; . which clashes with the codes of ethics of such professional bodies as the Bar associations. However, the Commission was unable to include amendments relating in particular to: - comparative tests; - voluntary control and the creation of a European self-regulatory body.?

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

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The directive on comparative advertising, first proposed by the Commission in May 1991, was agreed by the joint Parliament/Council Conciliation Committee. The final compromise text incorporates much of the substance of Parliament's amendments aimed at protecting the consumer and business competitors against misleading comparative advertising. Comparative advertising, colloquially known as "knocking copy", is advertising in which a vendor sets the supposedly superior merits of his own product or service against the allegedly lesser quality of rival products or services - often on the basis of comparative tests. The directive brings comparative advertising within the scope of directive 84/450/EEC on misleading advertising. The Committee on the Environment, Public Health and Consumer Protection, chaired by Mr Ken COLLINS (PES, UK), was the committee responsible and Parliament's rapporteur was Mrs Ria OOMEN-RUIJTEN (EPP, NL). In an acknowledgement that unscrupulous competitors should not be allowed to take a free ride on the backs of existing businesses with established reputations, Council accepted a parliamentary amendment banning comparative advertising of goods or services which are imitations or replicas of other goods or services with a protected trade mark or trade name. Parliament also persuaded Council to agree that comparative advertising must not discredit the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor. In a compromise provision on tests, whose authors usually have copyright over them, the Conciliation Committee agreed that the international conventions on copyright apply when comparative advertising refers to the results of comparative tests carried out by third parties. Moreover, at Parliament's insistence, advertisers may be required to provide evidence, within a short time, establishing the accuracy of factual claims made in comparative advertising. Parliament was also successful in getting Council to agree that Member States could maintain or introduce bans or limitations on the use of comparisons in the advertising of professional services. This will enable comparative advertising to be prohibited where it is against the codes of practice of professional bodies such as lawyers' organizations. According to another provision agreed after pressure from Parliament, the directive does not exclude the voluntary control of misleading or comparative advertising by self-regulatory bodies and such control may be encouraged by Member States. Furthermore, "national self-regulatory bodies may coordinate their work through associations or organizations established at Community level and, inter alia, deal with cross-border complaints". In addition, the Commission is to study the feasibility of establishing effective means to deal with such complaints. The Conciliation Committee was co-chaired by Mrs Nicole FONTAINE, an EP vice-president, and Ms Anneke VAN DOK-VAN WEELE, Netherlands State Secretary for Economic Affairs. As the final stage in the legislative procedure, the text agreed by the Conciliation Committee must now be adopted by the Council (by a qualified majority) and Parliament (by a simple majority). Member States have 30 months in which to implement the directive following its publication in the Official Journal. ?

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

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Pointing out that it would still take another 30 months before the Member States incorporated this into national legislation, the rapporteur welcomed the new directive which would provide consumers with useful information and simplify their choices, prevent competition distortion between Member States and, finally, tackle the cross-border aspect of complaints. Commissioner Bangemann explained that the procedure had taken so long because the Commission needed to check whether all the steps which it intended to take in this respect were necessary under the principle of subsidiarity. The Commissioner also promised to very closely monitor cases of cross-border complaints.

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

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Following the agreement reached in the Conciliation Committee on 25 June 1997, the Council adopted the Directive amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising. The German and Swedish delegations voted against

this Directive. The Finnish delegation gave an explanation of voting.?

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

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In adopting the report by Mrs OOMEN-RUITJEN (PPE, NL), Parliament approved the joint text with the Council on the amendment of the directive on misleading advertising, so as to include comparative advertising. The rapporteur welcomed the outcome of the Conciliation Committee which facilitated the incorporation of almost all of Parliament's proposals. The Council therefore adopted an amendment forbidding the comparative advertising of goods and services which were imitations or replicas of goods and services bearing a registered trade mark or trade name. It also ensured that comparative advertising would not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor. ?

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

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**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 ?