Council/European Parliament: Comparative advertising

IRIS 1996-10:1/13

Ad van Loon
European Audiovisual Observatory

On 19 March, the Council of the European Union adopted a common position on the Directive on misleading advertising (84/450/EEC), with a view to including comparative advertising. "Comparative advertising" is defined as "any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor" (Art. 2 (2a)). Comparative advertising is to be permitted, inter alia, when it is not misleading according to Arts. 2 (2), 3 and 7, when it compares goods or services meeting the same needs or intended for the same purpose, when the comparison is objective and can be verified, when it does not create confusion between the advertiser and a competitor, and when it does not discredit or denigrate the products, trade-marks, other distinguishing marks, etc. of competitors (new Art. 3a).

On 23 October 1996 the European Parliament made a number of changes in the Council's common position on a second reading (procedure under Art. 189b, para. 2). The reason given in the recommendation for the reading was that the Council had inserted a number of new provisions which would make comparative advertising very difficult in practice. However, in its final resolution, the Parliament could only agree to delete the statement that the conditions applying to comparative advertising were cumulative and must be comprehensively observed. It otherwise made some additions to the Directive, and revived a number of proposals from the first reading. For example, under its resolution, advertising content is to be voluntarily monitored by the national self-regulating bodies when necessary: the aim here is to relieve pressure on the adminstrative and judicial authorities. To facilitate supervision, the advertiser will be required to justify the comparative material before it appears. The Parliament also states that references to the results of comparative tests are permissible, but considers that the advertiser must then accept personal liability for such tests.

Common position (EC) No 29/96 of 19 March 1996 adopted by the Council acting in accordance with the procedure referred to in Article 189b of the Treaty establishing the European Community, with a view to adopting a European Parliament and Council Directive amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJEC 27 July 1996 No C 219: 14-18.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996AG0727%2802%29:EN:H

© European Audiovisual Observatory (Council of Europe) 2026

TML

Decision on the common position adopted by the Council with a view to the adoption of a European Parliament and Council Directive amending Directive 84/450/EEC on misleading advertising so as to include comparative advertising. European Parliament, Minutes of the Sitting of Wednesday, 23 October 1996, Provisional Edition, PE 252.723: 18-23.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996AP0314:EN:HTML

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026