

Avalent>Õigusaktid ja kohtupraktika>Tarbijaõiguse andmebaas>Eksitavat ja võrdlevat reklaami käsitlev direktiiv (2006/114)

Misleading and Comparative Advertising Directive (2006/114)

What is the aim of the directive? (Art. 1)

It seeks to protect traders against misleading advertising from other businesses (i.e. B2B), which is equivalent to an [unfair commercial practice](#). To this end, it determines the conditions under which comparative advertising is authorised.

Key points

1. Misleading advertising (Art. 3)

Advertisements which mislead or which may mislead the people who receive them are forbidden. The misleading nature of these advertisements could affect the economic behaviour of consumers and traders, or may be detrimental to a competitor.

The misleading nature of advertisements depends on a set of criteria:

- the characteristics of the goods or services (availability, nature or composition, method of manufacture or provision, origin, etc.), the results to be expected from their use, and the results of quality checks carried;
- the price or the manner in which the price is calculated;
- the conditions governing the supply of the goods or services;
- the nature, qualities and rights of the advertiser (identity and assets, qualifications, intellectual property rights, etc.).

2. Comparative advertising (Art. 4)

Comparative advertising explicitly or by implication makes reference to a competitor or competing goods or services.

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. It is desirable to provide a broad concept of comparative advertising to cover all modes of comparative advertising. 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. Such conditions of permitted advertising should include criteria of objective comparison of the features of goods and services.

This type of advertising is only permitted when it is not misleading. It can be a legitimate means of informing consumers of what is in their interests.

Therefore, in particular, the comparisons should:

- relate to goods or services which meet the same needs or are intended for the same purpose;
- relate to products with the same designation of origin;
- deal objectively with the material, relevant, verifiable and representative features of those goods or services, which may include price;
- avoid creating confusion between traders, and should not discredit, imitate or take advantage of the trade mark or trade names of a competitor.

3. Recourses (Art. 5)

European Union (EU) countries must ensure that those persons or organisations with a legitimate interest may bring a court action or an administrative appeal against illicit advertising;

Therefore, courts or administrative bodies from EU countries must be able to:

- order the withdrawal of illicit advertising, even in the absence of proof, of actual loss, damage or of an intention of negligence; or
- prohibit illicit advertising which has not yet been published.

From when does the directive apply?

It has applied since 12 December 2007. This directive [codifies](#) and repeals Directive [84/450/EEC](#), which EU countries had to incorporate into national law by 1 October 1986.

Background

For more information, see:

[‘Misleading advertising’](#) on the European Commission's website

Main document

Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) (OJ L 376, 27.12.2006, pp. 21–27).

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