

WRITTEN QUESTION E-1283/04
by Paul Rübige (PPE-DE)
to the Commission

Subject: Implementation of Directive 97/55/EC

The implementation of Directive 97/55/EC¹ on comparative advertising, which amended Directive 84/450/EEC² concerning misleading advertising, should be examined in each of the Member States, especially the areas of Directive 97/55/EC in which difficulties of interpretation have arisen. What debates are taking place in the individual Member States, and what information is available on the ways in which the legislation is being implemented with regard to the issues outlined below? Have the individual Member States produced reports on the implementation of the Directive or on specific problems they have encountered in doing so?

Does the concept of comparative advertising assume a comparison or does the wording of the Directive cover all other identifying references to competitors and their services (such as indications of their personal circumstances, e.g. nationality or previous convictions, or business-related information), without necessarily including an explicit comparison?

Does purely personal and business-to-business advertising featuring a comparison fall within the scope of the Directive under Article 2(2)(a)?

Is a distinction to be made between comparative personal and/or business-to-business advertising on the one hand and personal and/or business-to-business advertising that makes no comparison but identifies a competitor on the other?

Does the comparison of non-representative features of goods or services come under Article 3a(1)(c) of the Directive or, given that this is a case of full harmonisation (i.e. a series of bans), are all comparisons of this kind to be forbidden by the Member States? What is the situation regarding the promotion of competition through innovations that are not yet representative of the product in question?

Does the definition of comparative advertising apply to the comparison by a competitor of information about another competitor's products when clients have requested this information in a private conversation?

¹ OJ L 290, 23.10.1997, p. 18.

² OJ L 250, 19.9.1984, p. 17.