

Article 8

Those responsible for carrying out exploration projects shall submit an annual report to the Commission upon the progress of the work and the expenditure incurred. Representatives of the Commission shall have access at all times to the technical and financial documents relating to the projects.

Article 9

All information contained in the reports referred to in Article 8 shall be confidential.

Article 10

The Commission shall report annually on the progress of each of the projects to the European Parliament and to the Council.

Article 11

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*. It shall remain in force for a period of three years from the date of its entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Proposal for a Council Directive relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading and unfair advertising

(Submitted by the Commission to the Council on 1 March 1978)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the laws against misleading and unfair advertising now in force in the Member States differ widely; whereas, since advertising reaches to a large extent beyond the frontiers of individual Member States, it has a direct affect on the establishment and the functioning of the common market;

Whereas unfair and misleading advertising is likely to restrict the establishment of a system to ensure that competition is not distorted within the common market;

Whereas misleading and unfair advertising may cause a consumer to take decisions prejudicial to him when

acquiring property or accepting services and the differences between the laws lead, in many cases, not only to inadequate levels of consumer protection, but also prevent the execution of advertising campaigns beyond national boundaries and thus affect the free circulation of goods and provision of services;

Whereas the preliminary programme of the European Economic Community for a consumer protection and information policy ⁽¹⁾, provides in particular for appropriate action for the protection of consumers against false or misleading advertising;

Whereas it is in the interest of the public in general, as well as that of consumers and all those who, in competition with one another, carry on a trade, business or profession, throughout the common market, to harmonize national provisions against misleading and unfair advertising;

Whereas minimum criteria for determining whether advertising is misleading or unfair should be established for this purpose;

⁽¹⁾ OJ No C 92, 25. 4. 1975, p. 1.

Whereas, in view of modern techniques of communication, the definition of 'advertising' must be worded broadly, but should not extend to policy statements, the publication of comparative product tests by independent organizations and any similar statements;

Whereas the concepts of 'misleading advertising' and 'unfair advertising' must as far as possible be defined by reference to objective criteria;

Whereas comparative advertising may be beneficial to a consumer and a competitor to the extent that it compares material and verifiable details with each other and is neither misleading nor unfair;

Whereas the laws to be adopted by Member States against misleading and unfair advertising must be adequate and effective; whereas it is a matter for the Member States whether they wish these to be matters of civil law, administrative law or criminal law or a combination thereof;

Whereas persons affected, as well as associations with a legitimate interest in the matter, must have facilities for initiating proceedings against misleading or unfair advertising and in particular for obtaining the quick cessation of misleading or unfair advertisements;

Whereas if a person advertises by making a factual claim the burden of proof that his claim is correct must lie with him;

Whereas the provisions of this Directive do not preclude Member States from adopting other measures for the protection of consumers, subject to their obligations under the Treaty establishing the EEC and in particular the rules on the free movement of goods and services and competition,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The objective of this Directive is to protect consumers, persons carrying on a trade, business or profession, and the interests of the public in general against unfair and misleading advertising.

Article 2

For the purpose of this Directive:

— 'advertising' means the making of any pronouncement in the course of a trade, business

or profession for the purpose of promoting the supply of goods or services,

- 'misleading advertising' means any advertising which is entirely or partially false or which, having regard to its total effect, including its presentation, misleads or is likely to mislead persons addressed or reached thereby, unless it could not reasonably be foreseen that these persons would be reached thereby,
- 'unfair advertising' means any advertising which:
 - (a) casts discredit on another person by improper reference to his nationality, origin, private life or good name, or
 - (b) injures or is likely to injure the commercial reputation of another person by false statements or defamatory comments concerning his firm, goods or services, or
 - (c) appeals to sentiments of fear, or promotes social or religious discrimination, or
 - (d) clearly infringes the principle of the social, economic and cultural equality of the sexes, or
 - (e) exploits the trust, credulity or lack of experience of a consumer, or influences or is likely to influence a consumer or the public in general in any other improper manner,
- 'goods' means property of any kind, whether movable or immovable, and any rights or obligations relating to property.

Article 3

1. In determining whether advertising is misleading or unfair, pronouncements shall be taken into consideration concerning in particular:

- (a) the characteristics of the goods or services, such as nature, performance, composition, method and date of manufacture or provision, fitness for purpose, usability, quantity, quality, geographical or commercial origin, properties and the results to be expected from use;
- (b) the condition of supply of the goods or services, such as value and price, conditions of contract and of guarantee;
- (c) the nature, attributes and rights of the advertiser, such as his identity, solvency, abilities, ownership of intellectual property rights or awards and distinctions.

2. Advertising shall in particular be regarded as misleading when it omits material information, and, by reason of that omission, gives a false impression or arouses expectations which the advertiser cannot satisfy.

Article 4

Comparative advertising shall be allowed, as long as it compares material and verifiable details and is neither misleading nor unfair.

Article 5

Member States shall adopt adequate and effective laws against misleading and unfair advertising.

Such laws shall provide persons affected by misleading or unfair advertising, as well as associations with a legitimate interest in the matter, with quick, effective and inexpensive facilities for initiating appropriate legal proceedings against misleading and unfair advertising.

Member States shall in particular ensure that:

- the courts are enabled, even without proof of fault or of actual prejudice:
 - (a) to order the prohibition or cessation of misleading or unfair advertising; and
 - (b) to take such a decision under an accelerated procedure, with an interim or final effect;
- the courts are enabled:
 - (a) to require publication of a corrective statement; and
 - (b) to require publication of their decision either in full or in part and in such form as they may judge adequate;
- ensure that the sanctions for infringing these laws are a sufficient deterrent, and, where appropriate,

take into account the financial outlay on the advertising, the extent of the damage and any profit resulting from the advertising.

Article 6

Where the advertiser makes a factual claim, the burden of proof that his claim is correct shall lie with him.

Article 7

Where a Member State permits the operation of controls by self-regulatory bodies for the purpose of counteracting misleading or unfair advertising, or recognizes such controls, persons or associations having a right to take legal proceedings under Article 5 shall have both that right and the right to refer the matter to such self-regulatory bodies.

Article 8

The present Directive does not prevent Member States taking or maintaining other measures for the protection of consumers against misleading or unfair advertising to the extent that these measures are in conformity with the Treaty.

Article 9

Member States shall bring into force the measures necessary to comply with this Directive within 18 months of its notification and shall forthwith inform the Commission thereof.

Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 10

This Directive is addressed to the Member States.