



Reports of Cases

Case C-13/15

**Criminal proceedings
against
Cdiscount SA**

(Request for a preliminary ruling from the Cour de cassation (France))

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Directive 2005/29/EC — Consumer protection — Unfair commercial practices — Price reduction — Marking or display of reference price)

Summary — Order of the Court (Sixth Chamber), 8 September 2015

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Interpretation of national law — Not included*

(Art. 267 TFEU)

2. *Consumer protection — Unfair business-to-consumer commercial practices — Directive 2005/29 — Scope — Price reductions intended to induce consumers to buy products on an e-commerce website — Included*

(European Parliament and Council Directive 2005/29, Art 2(d))

3. *Consumer protection — Unfair business-to-consumer commercial practices — Directive 2005/29 — Unfair commercial practice — Meaning — National rules imposing a general prohibition of price reduction announcements with no indication of the reference price — Lack of case-by-case assessment of the unfair nature of such announcements — Unlawful*

(European Parliament and Council Directive 2005/29)

1. See the text of the decision.

(see paras 28, 29)

2. Price reductions intended to induce consumers to buy products on an e-commerce website constitute commercial practices within the meaning of Article 2(d) of Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market, and, consequently, come within its material scope.

Those reductions clearly form part of an operator's commercial strategy and relate directly to the promotion and sale of those products.

(see para. 32)

3. Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market must be interpreted as precluding national provisions which provide for a general prohibition, without a case-by-case assessment of whether they are unfair, of announcements of price reductions which do not show the reference price when the price is marked or displayed, in so far as those provisions pursue objectives relating to consumer protection, which is for the national court to determine.

In that regard, since Directive 2005/29 fully harmonises the rules relating to unfair business-to-consumer commercial practices, Member States may not adopt stricter rules than those provided for in the directive, as expressly provided for in Article 4 thereof, even in order to achieve a higher level of consumer protection.

That directive sets out, in its Annex I, an exhaustive list of 31 commercial practices which, in accordance with its Article 5(5), are regarded as unfair in all circumstances. Consequently, as recital 17 in the preamble to the directive expressly states, only those commercial practices can be deemed to be unfair without a case-by-case assessment under Articles 5 to 9 of the Unfair Commercial Practices Directive.

Practices which consist of announcing to consumers price reductions which do not show the reference price when the price is marked or displayed do not appear in Annex I to the directive. Therefore, they may not be prohibited in all circumstances, but only after a specific assessment has determined whether the practices are unfair.

(see paras 34, 38, 39, 41, operative part)