

COMMISSION NOTICE**Guidance on the interpretation and application of Article 6a of Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products offered to consumers****(Text with EEA relevance)**

(2021/C 526/02)

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INTRODUCTION

Directive 98/6/EC of the European Parliament and of the Council ⁽¹⁾ ('PID') aims to enable consumers to easily evaluate and compare the price of products on the basis of homogenous and transparent information. Thus, consumers are able to make better informed choices ⁽²⁾.

The PID requires traders to indicate in an 'unambiguous, easily identifiable and clearly legible' manner the selling price and the price per unit of measurement (i.e. the price per kilo, litre, or any different single unit of quantity widely and customarily used in the Member State concerned). Directive (EU) 2019/2161 of the European Parliament and of the Council ⁽³⁾ amended the PID adding specific rules – Article 6a – on price reduction announcements. Directive (EU) 2019/2161 will become applicable across the EU from 28 May 2022.

The new Article 6a of the PID addresses the issue of transparency of price reductions ⁽⁴⁾ by introducing specific rules to ensure that they are genuine. Article 6a aims at preventing traders from artificially inflating the reference price and/or misleading consumers about the amount of the discount. It increases transparency and ensures that consumers actually pay less for the goods when a price reduction is announced. The new provision on price reductions also enables the enforcement and market surveillance authorities to control more easily the fairness of price reductions, as it set clear rules on the reference 'prior' price on which the announced reduction must be based.

The purpose of this Notice is to provide guidance on how these new provisions on the announcements of price reductions should be interpreted and applied. To ensure legal certainty and facilitate enforcement, this Notice highlights issues that are common to all Member States, including the interplay between the PID and other EU legislation.

The Notice does not analyse the application of the Directive in the individual Member States, including the decisions of national courts and other competent bodies. In addition to different information sources available in the Member States, information on the national provisions transposing the PID, on case law and on legal literature is available in the Consumer Law Database accessible via the E-justice portal ⁽⁵⁾.

Where not specified otherwise, articles referred to in this Notice are those of the PID, as subsequently and most recently amended by Directive (EU) 2019/2161. Where quotations from the text of the Directive contain visual highlighting, such emphasis has been added by the Commission.

This Notice is addressed to the EU Member States and to Iceland, Liechtenstein and Norway as signatories of the Agreement on the European Economic Area ⁽⁶⁾ (EEA). References to the EU, the Union or the Single Market should therefore be understood as references to the EEA or to the EEA market.

This Notice is intended purely as a guidance document – only the text of the Union legislation itself has legal force. Any authoritative reading of the law has to be derived from the text of the Directive and directly from the decisions of the Court of Justice of the European Union (hereinafter: 'CJEU' or 'the Court'). This Notice takes into account rulings of the Court published until October 2021 and cannot prejudice further developments of the Court's case law.

The views expressed in this Notice cannot prejudice the position that the European Commission might take before the Court. The information contained in this Notice is of a general nature and does not specifically address any particular individuals or entities. Neither the European Commission nor any person acting on behalf of the European Commission is responsible for any use that may be made of the following information.

⁽¹⁾ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers ('the PID') (OJ L 80, 18.3.1998, p. 27).

⁽²⁾ See recitals 6 and 12 of the PID.

⁽³⁾ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7).

⁽⁴⁾ In 2018, under the coordination of the Commission, national consumer protection authorities carried out an annual EU-wide screening of e-commerce websites ('sweep') in the framework of the Consumer Protection Cooperation ('CPC') network. This Sweep dealt with price transparency including price reductions. For more than 31 % of the 431 screened e-commerce websites offering discounts, consumer authorities suspected that the special offers were not authentic or they found unclear the way the discounted price was calculated. Commission's press release of 19 February 2019: https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1333.

⁽⁵⁾ https://e-justice.europa.eu/591/EN/consumer_law_database

⁽⁶⁾ OJ L 1, 3.1.1994, p. 3.

As this Notice reflects the state of the art at the time of drafting, the guidance offered may be modified at a later date.

1. SCOPE OF ARTICLE 6A

Article 6a

1. Any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction.
2. The prior price means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.
3. Member States may provide for different rules for goods which are liable to deteriorate or expire rapidly.
4. Where the product has been on the market for less than 30 days, Member States may also provide for a shorter period of time than the period specified in paragraph 2.
5. Member States may provide that, when the price reduction is progressively increased, the prior price is the price without the price reduction before the first application of the price reduction;

1.1. Meaning of 'price reduction announcement'

Article 6a applies to promotional statements by the seller that it has reduced the price that it charges for the good(s). For example, price reduction could be announced:

- in terms of percentage (%), e.g. '20 % off' or specific amount, e.g. 'EUR 10 off';
- by indicating a new (lower) price together with the indication of the previously applied (higher) price. The previous price can be presented in crossed-out form. E.g. 'now EUR 50, was EUR 100' or 'EUR 50/~~EUR 100~~';
- by any other promotional technique such as 'buy today without paying the VAT' that tells the consumer that the price reduction is equal to the value of the VAT (not meaning that the VAT is not collected);
- presenting the current price as 'starting' price or similar and indicating a higher price as the upcoming normal price.

Article 6a applies to price reduction announcements both when they concern a specific good(s) in the seller's offer and when they are made by a general price reduction announcement (see sections 2.2. and 3).

Article 6a does not deal with, and **does not restrict in any way, price fluctuations and price decreases** that do not involve a price reduction announcement. Indeed, Article 6a is aimed at addressing 'announcements' of price reduction. Therefore, it does not cover long-term arrangements that allow the consumers to benefit systematically from reduced prices and specific individual price reductions (see section 2.3 on loyalty programmes and personalised price reductions).

Article 6a applies regardless of whether the price reduction announcement indicates a measurable price reduction. For instance, announcements such as 'sales' price, 'special offers' or 'Black Friday offers' that **create the impression of a price reduction are also subject to Article 6a** and the 'prior' price has to be indicated for the goods concerned by the announcement (see section 2.2 on general price reduction announcements).

By contrast, Article 6a does not apply to **general marketing claims that promote the seller's offer by comparing it with other sellers' offers without invoking or creating the impression of a price reduction**, such as 'best/lowest prices'. Such statements remain, however, subject to the UCPD (see section 3 on the interplay between the PID and the UCPD).

Article 6a also **does not apply either to other techniques of promoting price advantages** that are not price reductions such as price comparisons and tied (conditional) offers. These other techniques of promoting price advantage continue to be subject to the UCPD (see section 3).

As for the notion of 'price', Article 6a covers the 'selling price' as defined in Article 2 (a) of the PID ⁽⁷⁾. The PID also requires the indication of the 'unit price' as defined in Article 2(b) ⁽⁸⁾. For goods sold in bulk (e.g. fabrics, construction materials, food) ⁽⁹⁾ where the selling price cannot be determined until the consumer indicates how much of the good is required 'only the unit price must be indicated' under Article 3(3) of the PID. Article 6a applies also to price reduction announcements where, regarding such goods, the price reduction announcement concerns the unit price ⁽¹⁰⁾. In these cases, Article 6a applies to the indication of the 'prior' unit price.

The PID applies to 'products', **which have to be construed in the context of this Directive as 'goods'**. 'Goods' are defined in other provisions of EU consumer law ⁽¹¹⁾ as movable goods. Therefore, the PID, including Article 6a, does not apply to services ⁽¹²⁾ (including digital services) or to digital content.

Article 6a of the PID applies to price reductions announcements **in all distribution channels** (e.g. brick and mortar shops, online).

1.2. Traders concerned

The PID applies to the trader, defined in Article 2(d) as 'any natural or legal person who sells or offers for sale products which fall within his commercial or professional activity'. The new Article 6a therefore **applies to the trader who is the actual party in the contract with the consumer**, i.e. to the seller of the goods, including sellers using intermediaries, in particular online marketplaces.

In contrast, Article 6a **does not apply to the intermediaries** that provide the mere means for traders to sell their products ⁽¹³⁾, such as online marketplaces, or that merely aggregate and display information about the prices provided by other sellers (price comparison platforms). These intermediaries remain subject to the general rules on intermediary liability and professional diligence obligations. The intermediary is, however, subject to the PID rules when it is the actual seller of the goods or when it sells on behalf of another trader.

For the same reason, Article 6a does not apply to 'cash-back' announcements whereby third parties, which are not sellers of the goods, such as manufacturers/distributors, promise the consumers who have purchased the good(s) in question, to refund part of the price paid, at the consumers' individual request and during a certain period. Such 'cash-back' practices remain subject to the UCPD and must not be used to circumvent the requirements of the PID for price reduction announcements.

⁽⁷⁾ 'selling price shall mean the final price for a unit of the product, or a given quantity of the product, including VAT and all other taxes', Article 2 (a) of the PID.

⁽⁸⁾ 'unit price shall mean the final price, including VAT and all other taxes, for one kilogramme, one litre, 1 metre, one square metre or one cubic metre of the product or a different single unit of quantity which is widely and customarily used in the Member State concerned in the marketing of specific products;', Article 2 (b) of the PID.

⁽⁹⁾ 'products sold in bulk shall mean products which are not pre-packaged and are measured in the presence of the consumer', Article 2 (c) of the PID.

⁽¹⁰⁾ See recital 7 of the PID.

⁽¹¹⁾ Under the Consumer Rights Directive ('CRD') (Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64)), as amended by Directive (EU) 2019/2161, goods are defined as '(a) any tangible movable items; water, gas and electricity are to be considered as goods within the meaning of this Directive where they are put up for sale in a limited volume or a set quantity; (b) any tangible movable items that incorporate or are inter-connected with digital content or a digital service in such a way that the absence of that digital content or digital service would prevent the goods from performing their functions ("goods with digital elements");'.

⁽¹²⁾ See Communication from the Commission to the Council and the European Parliament on the implementation of Directive 1998/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of prices of products offered to consumers (COM(2006) 325 final, p. 4).

⁽¹³⁾ Under the Consumer Rights Directive 2011/83/EU consumers must always be informed about the identity of the actual trader (for further information, see the guidance on the CRD).

Article 6a applies also to **traders based outside the EU that direct their sales to EU consumers**, including to traders offering goods via platforms. The applicability of the PID to non-EU traders is regulated by Regulation (EC) No 864/2007 of the European Parliament and of the Council ⁽¹⁴⁾ on the law applicable to non-contractual obligations (Rome II). This regulation applies ‘in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters’.

Article 6(1) of the Rome II Regulation:

The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.

Article 6(4) of the Rome II Regulation:

The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

When the conditions of Article 6(1) of the Rome II Regulation are fulfilled, the PID will be applicable to cases of infringement that harm the collective interests of EU consumers. Pursuant to Article 6(4) of the Rome II Regulation, the applicable law may not be derogated from by a choice-of-law agreement.

National authorities will be in charge of enforcing these rules. Where needed, they will be able to use their investigation and enforcement powers under Regulation (EU) 2017/2394 of the European Parliament and of the Council ⁽¹⁵⁾ on consumer protection cooperation.

2. INDICATION OF THE ‘PRIOR’ PRICE

2.1. General rules

Paragraph 1 of Article 6a requires the trader who announces a price reduction to indicate the ‘prior’ price. Paragraph 2 of Article 6a defines the ‘prior’ price as the lowest price applied by the same trader during a period of time not shorter than 30 days prior to the application of the price reduction.

Paragraphs 3 to 5 of Article 6a give Member States regulatory choices allowing them to derogate from this general rule in case of goods that are liable to deteriorate or expire rapidly, goods that have been on the market for less than 30 days and goods for which the price reduction is progressively increased, respectively (see section 4).

Except for the goods covered by the regulatory choices referred to in paragraphs 3 to 5 of Article 6a, **Member States may not provide for a shorter period than 30 days** for establishing the ‘prior’ price. The purpose of this reference period of at least 30 days is to prevent traders from juggling with prices and presenting fake price reductions, such as increasing the price for a short period in order to decrease it afterwards by presenting it as a (significant) price reduction that misleads consumers. The 30-day period for setting the reference ‘prior’ price, therefore, ensures that the reference price is real and not merely a marketing tool to make the reduction seem attractive.

Paragraph 2 of Article 6a **does not prevent traders** from indicating as ‘prior’ price the lowest price applied during an even longer period than 30 days (for example, as part of the marketing strategy). It will not be contrary to the requirements of Article 6a if the ‘prior’ price indicated is actually lower than the lowest price in the 30 days immediately preceding the price reduction announcement.

In contrast, national legislation **requiring a longer period** than 30 days to establish the ‘prior’ price would need to be assessed as to its compliance with EU Law. According to Article 10 of the PID, any national rules going beyond the requirements of this directive must be more favourable as regards consumer information and comparison of prices, without prejudice to the Member States’ obligations under the TFEU ⁽¹⁶⁾.

⁽¹⁴⁾ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).

⁽¹⁵⁾ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

⁽¹⁶⁾ See in particular Articles 34 and 36 of the Treaty on the Functioning of the European Union.

To comply with Article 6a, the trader announcing the price reduction must identify the lowest price that it charged for the respective good or goods during at least the last 30 days before the application of the price reduction. Such **lowest price shall include any previous 'reduced' price during that period**. Failure to take into account the prices applied during any previous promotional periods in the 30 days before the price reduction announcement will be contrary to Article 6a of the PID.

The same rule applies where a trader initially presents the price reduction by **referring to a forthcoming increased price**, then applies the increased price for less than 30 days and then announces a price reduction. Regardless of how the price reduction was marketed, the prior price for the subsequent price reduction still has to be the lowest price in the last 30 days, i.e. in this case the initial starting price (see also section 4.2. on 'new arrival' goods).

Accordingly, the **price reduction must be presented using the indicated 'prior' price as reference**, i.e. any indicated **percentage reduction must be based on the 'prior' price as established in accordance with Article 6a**:

- For example, where the price reduction announcement is '50 % off' and the lowest price in the 30 previous days was EUR 100, the seller will have to present EUR 100 as the 'prior' price from which the 50 % reduction is calculated, despite the fact that the last selling price of the good was EUR 160.

At the same time, Article 6a does not prevent the seller from **indicating other reference prices** when announcing the price reduction, provided that such additional reference prices are clearly explained, that they do not create confusion and do not detract the consumer's attention from the indication of the 'prior' price in accordance with Article 6a.

- For example, a trader that practices price reductions more often than once every 30 days could additionally inform the consumer about its other previous prices as follows: '20 % off from [starting date] to [end date]: EUR 80 instead of EUR 100, our lowest price in the past 30 days. Our regular price, outside promotional periods, during the past 30 (or 100 days etc.) was EUR 120'

In general, the manner in which any such other reference prices are presented and calculated are subject to the UCPD. In this respect, traders must always make sure that it is clear to the consumer what the other indicated reference prices represent.

Article 6a of the PID does not require the traders to indicate for **how long they have applied the indicated 'prior' price**. Furthermore, it does not affect **the duration of the price reduction campaigns**. It simply requires traders to indicate the 'prior' price at the start of each price reduction and they can keep it throughout the entire period of the price reduction. Traders may announce a price reduction for the goods over a longer time-period, including for more than 30 days. Also, where the price reduction lasts longer than 30 days without interruption, the 'prior' price to be indicated remains the lowest price applied during at least 30 days before the price reduction.

The fairness of **excessively long price reduction periods** in comparison with the time when the good is sold at the 'full' price remains to be assessed under the UCPD (see also section 3 on the interplay with the UCPD).

Where a trader sells goods through different sales channels/points of sale (e.g. different physical and/or online shops) at different prices and those different sales channels/points of sale are the object of a general announcement of a price reduction, the trader must indicate, as 'prior' price for the relevant goods in each sales channel/point of sale, the lowest price that it **applied in that respective sales channel/point of sale** during at least 30 past days.

Misleading price reduction announcements that create the impression that the reduction applies in all the given trader's sales channels/points of sale whereas in reality only some of the sales channels/points of sale are subject to the price reduction are to be assessed against the UCPD.

Article 6a does not prevent traders from **extending a price reduction campaign** as long as consumers are clearly informed that it is an extension and not a new price reduction campaign and the overall presentation of the campaign is not susceptible to create a false impression on consumers.

2.2. Indication of the 'prior price' in case of general price reduction announcements

Article 6a does not prevent traders from announcing price reductions in a general manner, for example:

- '20 % off on everything today' or

- ‘20 % off on all Christmas decorations this week’.

Where the price reduction (as described in section 1.1) is announced by a general statement, e.g. a physical banner or online communication, **the ‘prior’ price does not have to be indicated on the same medium** as the price reduction announcement itself. Instead, the ‘prior’ price for the individual goods covered by the announcement must be indicated **at the point of sale**, i.e. on the respective price tags in shops or price sections in online shop interfaces.

A trader may also announce a general price reduction providing **different discounts for different categories of goods**. In these cases, the trader must clearly identify the categories of goods concerned and their respective price reduction, for example:

- ‘30 % off on goods with a blue dot and 40 % off on goods with red dot’.

Regarding the indication of the ‘prior’ price for the individual goods covered by the general price reduction announcement, two cases must be distinguished:

- where in the past 30 days, **the trader has not increased the price** of the individual goods covered by the general announcements and has not organised other (general) price reductions during that period. In this case, the ‘prior’ price for the purposes of Article 6a will be the previously applied **selling price of the goods**, i.e. the price already indicated on the price tag or in the price section of the online shop interface. Accordingly, the trader will not need to change the price tags/online information for the goods concerned due to the application of Article 6a of the PID.
- where the **trader has increased the price** or has organised another (general) price reduction in the last 30 days, the selling price on the tag or online will not qualify as ‘prior’ price as it will not be the lowest price in the past 30 days as required by Article 6a. The trader will therefore have to adjust the relevant price tags or online price indication of the goods covered by the general price reduction announcement in order to indicate the correct ‘prior’ price for those goods.

Article 6a of the PID does not prevent **group advertising** of price reductions where central entities, such as franchisors, plan and advertise price reduction campaigns on behalf of the sellers (retailers) that distribute their products. Where such central entity announces price reductions on behalf of its members, it has to make sure that the participating retailers are in a position to comply with the requirements regarding price reductions, e.g. they must enable the participating retailers to respect the rules on indicating the ‘prior’ price. Each participating retailer remains responsible, also in this case, for ensuring that the relevant goods that it sells in the context of the price reduction campaign have the correct ‘prior’ price.

As explained above, where the participating retailer has kept its prices stable during the past 30 days before the announcement of the reduction, no adjustment of the individual ‘prior’ prices will be needed as the previous selling price will constitute the ‘prior’ price for the purposes of Article 6a. Should it not be the case for certain goods covered by the general campaign, the seller must adjust the ‘prior’ price for the goods concerned. This includes cases where price reduction campaigns launched by the respective seller (retailer) for its own goods are followed within less than 30 days by campaigns launched by the central entity. In such cases, for determining the ‘prior’ price, the individual retailer concerned must take into account the reduced price in the previous campaign(s).

2.3. Loyalty programmes and personalised price reductions

Article 6a of the PID does not apply to **seller’s customer loyalty programmes**, such as discount cards or vouchers, which entitle the consumer to a price discount on all seller’s products or on identified product ranges during extended continuous periods (e.g. 6 months, 1 year) or which allow accumulation of credits (points) for future purchases.

Article 6a of the PID does not apply either to **real personalised price reductions** that do not have the nature of ‘announcing’ the price reduction. A typical example of such price reductions are those resulting from the consumer’s prior purchases with the seller concerned, such as when the consumer receives a ‘20 % off’ voucher upon the purchase, valid for the next purchase until end of the month. Other examples of real personalised price reductions falling outside the scope of Article 6a are reductions granted on special occasions for that consumer, such as upon signing up to the loyalty programme or on the consumer’s marriage or birthday, as well as reductions applied at the time of the purchase that have not been ‘announced’ in advance.

Such loyalty programmes and personalised offers continue to be assessed under the UCPD (see sections 2.8.2. and 4.2.8 of the Guidance on the UCPD ⁽¹⁷⁾).

In contrast, Article 6a of the PID will be applicable to those price reductions, which, even though presented as personalised, are in **reality offered/announced to consumers in general**. Such situation could occur where the trader makes available 'vouchers' or discount codes to potentially all consumers visiting the brick and mortar shop or the online shop during specific periods. Examples could be campaigns such as:

- 'Today 20 % off when using the code XYZ'; or
- 'This weekend 20 % off on everything for loyalty members only'.

where the code/the loyalty programme is accessible/used by many or the majority of customers. In these cases, the trader must comply with the requirements of Article 6a, i.e. ensuring that the 'prior' price for all the goods concerned is **their lowest publicly available price** in the last 30 days (see section 2.1. on general price reduction announcements).

3. INTERPLAY WITH THE UNFAIR COMMERCIAL PRACTICES DIRECTIVE

The Unfair Commercial Practices Directive 2005/29/EC of the European Parliament and of the Council ⁽¹⁸⁾ ('UCPD') prohibits unfair commercial practices in business-to-consumer transactions ⁽¹⁹⁾. It applies to all commercial practices that occur before, during and after a business-to-consumer transaction has taken place. Article 2(d) of the UCPD defines commercial practices as being 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers'. An unfair commercial practice could be a misleading or an aggressive practice (Articles 6 to 9) or an infringement of professional diligence requirements (Article 5(2)) likely to distort the transactional decision of an average consumer.

Article 3(4) of the UCPD provides that, in the case of a conflict between the provisions of the UCPD and other rules of EU law regulating specific aspects of unfair commercial practices, the latter prevail and apply to those specific aspects.

Therefore, insofar as Article 6a of the PID introduces a specific set of rules regarding the definition and indication of the 'prior' price when announcing a price reduction, it prevails over the UCPD regarding those aspects of price reduction that are governed by those specific rules ⁽²⁰⁾.

Accordingly, the correctness of the 'prior' price indicated by the seller and of the corresponding price reduction has to be assessed against the specific requirements of Article 6a of the PID. However, this does not preclude the national enforcement authorities from also applying the UCPD to the practices of traders that infringe Article 6a of the PID when they **also** constitute unfair practices prohibited by the UCPD, in particular misleading actions in relation to the existence of specific price advantage within the meaning of Article 6(1)(d).

Moreover, as mentioned in Section 1.2.5 of the Guidance on the UCPD, the UCPD and in particular Article 6(1)(d) on the misleading claims about the existence of price advantage **remains applicable to other aspects of price reductions**. The UCPD could apply to different misleading aspects of price reduction practices, such as:

- excessively long periods during which price reductions apply compared to the period during which the goods are sold at a price without price reduction;
- advertising a reduction of, for example, 'up to 70 % off' when only a few of the items are reduced by 70 % and the rest are reduced at a significantly lower percentage.

⁽¹⁷⁾ https://ec.europa.eu/info/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive_en

⁽¹⁸⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

⁽¹⁹⁾ Before the amendments to the PID introduced by Directive (EU) 2019/2161, the Court of Justice of the European Union had confirmed the impossibility for Member States to adopt more prescriptive national rules on price reductions on the basis of the UCPD and the (original) Price Indication Directive in Case C-421/12, *European Commission v Kingdom of Belgium*, ECLI:EU:C:2013:769.

⁽²⁰⁾ See also Court of Justice of the European Union, Case C-476/14, *Citroën*, ECLI:EU:C:2016:527.

In that regard, it has to be noted that, apart from price reductions, a seller may use other types of **practices promoting price advantages**, such as:

- comparisons with other prices, e.g. prices of other traders ⁽²¹⁾ or the manufacturer's recommended retail price;
- combined or tied conditional offers (e.g. 'buy one, get two' or '30 % off when buying three').

Such promotional practices are outside the scope of Article 6a of the PID but remain fully subject to the UCPD.

The UCPD also covers any price reduction announcements or other types of practices promoting price advantages regarding digital content ⁽²²⁾ and all kinds of services, as the PID applies only to movable goods (see section 1.1).

A seller may also combine price comparison with a price reduction announcement regulated by Article 6a of the PID. As stated in section 2.8.2 of the UCPD guidance, a seller presenting a price comparison **must pay utmost attention** to ensure that the average consumer does not perceive the comparison with, e.g. the recommended retail price, as a price reduction. Where, due to its misleading presentation, the price comparison is actually perceived by an average consumer as a price reduction, such practice can amount to the breach of both the UCPD and Article 6a of the PID due to the incorrect presentation of the 'prior' price.

4. REGULATORY CHOICES

Paragraphs 3 to 5 of Article 6a offer Member States the possibility to derogate from the general rule on price reductions in the case of:

- goods which are liable to deteriorate or expire rapidly ('perishable goods');
- goods which have been on the market for less than 30 days ('new arrivals' goods); and
- successive price reductions within a period of 30 days.

4.1. Perishable goods

Article 6a

3. Member States may provide for different rules for goods which are liable to deteriorate or expire rapidly.

The option provided in paragraph 3 of Article 6a allows Member States to provide for different rules for goods that are liable to deteriorate or expire rapidly. Such rules may even consist of **completely exempting such goods from the scope of Article 6a** or allowing the seller to indicate as 'prior' price the last price immediately before the price reduction.

Goods which are 'liable to deteriorate or expire rapidly' are perishable goods that may need to be discounted more often in order to sell them faster due to approaching expiration dates. This notion is also used in Article 16(1)(d) of the Consumer Rights Directive ⁽²³⁾ ('CRD'), which provides that consumers do not have the right of withdrawal in respect of distance and off-premises contracts as regards 'the supply of goods which are liable to deteriorate or expire rapidly'.

The CRD does not define the 'goods which are liable to deteriorate or expire rapidly'. The compliance with the objective criteria of being 'liable to deteriorate or expire rapidly' is to be assessed on a case-by-case basis. Examples of goods liable to deteriorate or expire rapidly are fresh food and drinks with short expiry time limits. This possibility for Member States to derogate from the general rule on price reductions cannot be applied to goods that are not perishable because of their physical composition and properties but only 'expire' in the commercial sense, such as seasonal clothing ⁽²⁴⁾.

⁽²¹⁾ A comparison of prices of different traders falls also under Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21), which lays down the conditions under which comparative advertising is permitted.

⁽²²⁾ Defined as 'data which are produced and supplied in digital form' in Article 2(1) of Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).

⁽²³⁾ Directive 2011/83/EU.

⁽²⁴⁾ See Guidance on Directive 2011/83/EU on consumer rights: https://ec.europa.eu/info/law/law-topic/consumer-protection-law/consumer-contract-law/consumer-rights-directive_en

The same approach as the one under the CRD is valid when interpreting this notion under the PID.

4.2. 'New arrivals' goods

Article 6a

4. *Where the product has been on the market for less than 30 days, Member States may also provide for a shorter period of time than the period specified in paragraph 2.*

The option provided in paragraph 4 of Article 6a enables Member States to allow price reduction announcements also in respect of goods ('new arrivals') that the trader has been selling for less than 30 days before announcing the price reduction. The option is formulated broadly and refers to 'a shorter period of time' (than the default period of at least 30 days).

Unlike the regulatory choice regarding goods which are liable to deteriorate or expire rapidly, for which Member States can provide 'different rules', including the exemption of such goods from the scope of Article 6a, this regulatory choice only refers to 'a shorter period of time'. Accordingly, it cannot not be interpreted as including also the possibility of complete exemption of these goods from the requirement to observe a reference period for establishing the 'prior' price.

Therefore, where Member States choose to apply this possibility to derogate from the general rule, they must set out a **specific period of time** for the determination of the 'prior' price, or, alternatively, **allow traders to determine the period of time by themselves and to indicate this period along with the corresponding 'prior' price**. In this latter scenario, where the specific reference period is not established by the national rules, the fairness of price reduction announcements for the goods in question will continue to be assessed on case-by-case basis under the UCPD.

The notion of being on the 'market' needs to be interpreted in the context of the general rule set out in the first and second paragraph of Article 6a, which refer to the actions of the specific trader who announces the price reduction. Therefore, 'market' in this context refers to the selling of the goods by the given trader, as defined by Article 2(d) of the PID.

Goods should be considered as having already been on the 'market' where the **seller resumes the offer** of the **same** goods after a period of interruption, e.g. after the goods were temporarily out of stock or in case of seasonal goods, such as winter/summer clothes. In that case, since such goods would not be, strictly speaking, new arrivals, the exception provided for in Article 6a(4) would not apply.

However, in these situations, the trader can choose, as a reference period for setting the 'prior' price, **a longer period of time** during which the good was offered for sale for a total of at least 30 days. Therefore, where the seller offers again a good for sale after a period of interruption, the seller can announce a price reduction indicating as the 'prior' price the lowest price applied in the reference period before the interruption (for example, in the past year) provided that:

- the good has been offered for sale for a total at least for 30 days during that reference period; and
- the 'prior' price indicated is the lowest price in the whole reference period.

Subject to a case-by-case assessment, the trader may be required, in accordance with Article 7 of the UCPD, to inform the consumer when the indicated 'prior' price is a price that was applied not in the period immediately preceding the price reduction but e.g. in the previous season.

4.3. Progressive price reductions

Article 6a

5. *Member States may provide that, when the price reduction is progressively increased, the prior price is the price without the price reduction before the first application of the price reduction;*

The regulatory choice provided in paragraph 5 of Article 6a applies when the price is gradually reduced, **without interruptions**, during the same sales campaign. In this case, the 'prior' price is the lowest price during the 30 days before the application of the first price reduction announcement and it remains the 'prior' price for all subsequent price reduction announcements during the sales campaign.

- For example, the lowest price of the good for the last 30 days before the sales campaign started was EUR 100. The seller indicates EUR 100 as its 'prior' price when it announces the first price reduction (e.g. 10 % off) and can then keep the same 'prior' price also when announcing the following 20 % and 30 % reductions.

The situation is different in the case of successive sales campaigns during a 30-day period (e.g. in promotions such as '20 % off every Sunday in December' or during successive 'Singles day', 'Black Friday', 'Cyber Monday' or Christmas sales campaigns in November/December). In the context of such successive sales campaigns, where the price is increased in intermittent (short) periods, the general rule of Article 6a applies and the 'prior' price for each successive price reduction is the lowest price during at least the past 30 days, i.e. including the reduced price during the previous promotions.

To avoid a circumvention of paragraphs 1 and 2 of Article 6a, paragraph 5 shall be interpreted narrowly. Accordingly, it is only applicable when the price is reduced progressively, without interruptions and without increasing the indicated 'prior' price in the course of the continuous price reduction.
