



Recommendations to improve the interpretation of and compliance with Article 6a of the 2019 Price Indication Directive

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Introduction

Diverging transposition and interpretation of the 2019 Price Indication Directive (PID) and Unfair Commercial Practices Directive (UCPD) has led to complications for companies, national authorities and consumers alike. This joint paper by Ecommerce Europe, EuroCommerce and Independent Retail Europe outlines our views on the transposition and problematic issues we identified, and solutions we propose to improve the situation for all parties concerned.

This paper seeks to support the European Commission's review report of the 2019 Omnibus Directive, and work jointly towards a harmonised and well-informed application of the PID, in order for it to meet its objectives.

Particularly we address:

- I. how to improve overall compliance by traders;
- II. diverging interpretation by the Member States (including how those affect retailers across the EU);
- III. recommendations to improve the application of the existing rules and guidance in order to strike the right balance between consumer protection and traders.

Improving compliance with the new PID rules

According to sweeps performed by the Consumer Protection Cooperation (CPC) Network and other reporting, there are still many traders that are non-compliant with the PID. We consider that in most cases this is likely to be due to a lack of awareness or a lack of clarity of the new rules, although some players may even deliberately indicate misleading price reductions or comparisons. Below we offer a number of ideas that we believe will improve compliance with the new rules and increase consumer protection and trust.

A. Improve enforcement via the Consumer Protection Cooperation Regulation

We consider that the creation of a structured enforcement dialogue between the CPC Network and industry will help to identify areas where they see frequent non-compliance and to improve the understanding of authorities and traders and ultimately, overall compliance in the EU with EU consumer protection rules.

We suggest that the CPC Network establishes together with industry, consumer organisations and other stakeholders, a priority enforcement calendar for a number of years, where, for example, the CPC members commit to prioritise enforcement in a different area every six months (e.g. price announcements, right of withdrawal, pre-contractual information, green claims, etc.). This focused enforcement should be complemented by awareness campaigns and compliance workshops for traders at national level by national authorities, with support of EU and local trade associations. Such an approach would enable traders to prioritise their compliance efforts and would over a number of years increase compliance.



In addition, it would be important that, to ensure that all traders comply with the rules, the CPC network and the European Commission assess what type of traders are non-compliant in order to develop a more targeted approach.

We recommend the Commission and Member States:

- **To institutionalise a structural regulatory dialogue between CPC authorities, traders and other stakeholders to:**
 - identify areas where systemic non-compliance of EU consumer protection rules takes place and more enforcement actions are needed;
 - establish an EU enforcement & compliance agenda, where CPC members commit to focus on a different priority area every six months, accompanied by awareness campaigns and compliance workshops for traders with the support of trade associations.

B. Develop criteria for correct and clear price announcements

Our members would welcome better guidance on how to assess whether a price reduction or price comparison (i.e. price announcements) is correct and clear i.e. not misleading. Some inspiration can be found in a recent report on “Consumer Solicitation” by Carole Aubert de Vincelles, a renowned legal researcher at the French Cergy University¹. For instance, the report proposes alternative approaches to improve price reduction and comparison regulation. The report highlights the importance of maintaining the distinction between price reduction and price comparison and better defining the latter. For price reduction announcements, for instance, the lowest price charged in the last thirty days to all customers should be the reference price, while expressly authorising price comparison in Article 6a for all other situations. When it comes to comparison of prices, new EU guidance should include clear criteria defining when a reference price can be considered fair under the UCPD.

In addition, certain countries, for instance Belgium,² Denmark,³ and Finland⁴ already have guidelines for prior price and price announcements that could provide inspiration for EU-level guidelines, as well as EU and national case law. To ensure clarity, such EU guidelines should be established in a dialogue between the Commission, the CPC network and relevant stakeholders.

We recommend:

- To ensure consumers are well-protected, **the Commission, CPC authorities, industry and consumer stakeholders need to jointly develop criteria or principles to help traders assess what qualifies as a price announcement and whether it is correct fair and clear to consumers.**
- Develop a short set of good practice / principles and Q&A highlighting examples of compliant price announcements.

¹ [La sollicitation du consommateur - Chaire droit de la consommation \(cyu.fr\)](http://La_sollicitation_du_consommateur_-_Chaire_droit_de_la_consommation_(cyu.fr))

² <https://economie.fgov.be/sites/default/files/Files/Entreprises/Guidelines-annonces-de-reduction-de-prix.pdf> (French) and <https://economie.fgov.be/sites/default/files/Files/Entreprises/Guidelines-aankondigingen-van-prijsverminderingen.pdf> (Dutch)

³ <https://www.forbrugerombudsmanden.dk/media/48862/2016-guidelines-on-price-information-in-marketing.pdf>

⁴ <https://www.kkv.fi/kuluttaja-asiat/tietoa-ja-ohjeita-yrityksille/kuluttaja-asiamiehen-linjaukset/tavaroiden-ja-palveluiden-hinnan-ilmoittaminen/>

C. Resolve implementation issues and streamline application

1. Price reduction announcements and prior price: display

The Unfair Commercial Practices Directive (UCPD) aimed at establishing robust and uniform EU maximum harmonisation rules to maintain a high level of consumer trust and protection in the Single Market. However, following the adoption of the Omnibus Directive and more specifically as regards the PID, several Member States have diverging interpretations regarding the ways used to convey price-related information to consumers when announcing a price reduction (Art. 6a), which is fragmenting the Single Market. While in some countries a lower price displayed in red suffices to indicate a price reduction, others have adopted more stringent stipulations for the display of such reductions. For example, in Poland⁵, price reduction announcements must be accompanied by a specific label with the text “Lowest price in the last 30 days prior to price reduction” when there have been prior changes in price. This type of national provisions is contrary to the principle of harmonisation and the free movement of services.

We recommend:

- The Commission uses the review of the Omnibus Directive to map **the various national diverging interpretations and assess their proportionality and appropriateness in relation to the UCPD’s core principle of conducting case-by-case assessments**. Such a network of information exchange between companies and the Commission could aid in the pursuit of legal clarity.
- Based on the work above, **assess, by means of the earlier suggested structural enforcement dialogue with relevant stakeholders and the Consumer Protection Cooperation (CPC) network**, the various issues in the Member States and establish a common understanding of which practices are considered price reduction announcements and which are not.
- That where necessary, the Commission enforces the rules.
- Clarifying the definition of the price reduction announcement as a time-bound promotion and clearly labeled as such, offered to customers and applicable to all possible sales channels (online, offline, social media, etc.).⁶

2. Price announcement and prior price: calculation

Article 6a PID is an exception to the principled-based approach of the UCPD, the case-by-case approach is no longer relevant when controlling the lowest price within the 30-days period. The application of 6a outside of any context creates significant obstacles, particularly: in periods of recurrent promotions (which justifies in some of these cases the use of price comparison), for oral announcements in department stores. It is therefore important to emphasize that the case-by-case approach has an interest and that the choice to derogate from it via Article 6a PID is not neutral.

The Commission’s guidance on how the prior price should be calculated has also led to diverging interpretation regarding the calculation of percentage references for reduced prices based on prior prices. In some Member States, there is a disagreement between retailers and consumer ombudsmen regarding which price should serve as the basis for calculating discount percentages.

⁵ <https://uokik.gov.pl/download.php?plik=27128>

⁶ Traders’ loyalty programmes may or may not be in scope depending on the transposition of the PID

The Commission's guidance asserts that price reductions must be presented using the "prior" price as the reference, stipulating that any indicated percentage reduction should be based upon the "prior" price as established by Article 6a of the [PID](#). However, this does not always provide meaningful information to consumers and limits traders' ability to announce a price reduction compared to the last price even if that was not the lowest price in the last 30 days. The main aim should be to be transparent to consumers provide them with meaningful information and not be overly descriptive to traders about how this should happen.⁷

Following the same logic, any product subject to a promotion that for instance offers a high discount for a very limited time, will then preclude any other action of that product in the 30 following days. This is an important constraint for some traders in case of a sequence of promotions such as Black Friday/Cyber Monday/Christmas/Sales (*soldes*) (all happening between October and January with less 30 days in between each announcement) or Easter/mother's day/father's day/grand-parents day.

These are some examples of the drawbacks of having an imperative rule that ignores special cases.

We recommend:

- Ensure that the Commission's guidance **allows traders to provide consumers with meaningful information** and limit the possibility for diverging interpretation at national level
- **Monitoring case law**

3. National transposition of the PID sometimes covers services

The approach taken by certain Member States, including Belgium, France, Poland and Portugal, of extending the scope of the Price Indication Directive (PID) to include services may infringe EU law. From Article 1 of the PID it is clear that this Directive only applies to products: "*The purpose of this Directive is to stipulate indication of the selling price and the price per unit of measurement of **products** offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.*" The Commission's guidance on Article 6a PID confirms this by stating that Article 6a "*does not apply to services (including digital services) or to digital content*".

The rule of the lowest price applied in the last 30 days is not relevant for services, especially for travels and hospitality where the price is subject to yield management strategy. For instance, the price of a hotel room will change depending on the type of the room, length of the stay, the period of the stay, the cancellation conditions and half board or full board options.

DG JUST clarified to Member States' experts in the Expert Group on Consumer and Marketing Law on 13 February 2020 that, while the PID is a minimum harmonisation instrument, Member States need to carefully consider any changes as those might affect cross-border trade. On this basis, Member States cannot use the minimum harmonisation clause to adopt national rules in areas that the Directive does not regulate.

⁷ The German Düsseldorf Regional Court has referred a case to the Court of Justice of the European Union ([Case C-330/23, Aldi Süd](#)) which will be very important regarding the application of Article 6a. The CJEU has been asked two questions:

- 1) Are Article 6a(1) and (2) of the Price Indication Directive to be interpreted as meaning that a percentage mentioned in an announcement of a price reduction may relate exclusively to the previous price within the meaning of Article 6a(2) of the Price Indication Directive?
- 2) Are Article 6a(1) and (2) of the Price Indication Directive to be interpreted as meaning that advertising highlights intended to emphasize the low price of an offer (such as, for example, the designation of the price as a 'price highlight') must, if they are used in an announcement of a price reduction, refer to the previous within the meaning of Article 6a(2) of the Price Indication Directive?

In addition, the CJEU ruling on joined cases [C-261/07 and C-299/07](#), provides clear guidance that Member States are not permitted to go beyond the boundaries set by Article 6a as this would violate the UCPD due to the maximum harmonisation principle.

We recommend:

- The Commission to **discuss with relevant Member States the scope of the PID and its link to the UCPD** and, where necessary, ensure EU law is respected and well-transposed across the EU.
- To ensure effective enforcement of PID and UCPD rules, **Member States' proactive collaboration with the Commission** and the provision of concrete data can be instrumental. Tools such as e-Lab, could facilitate a high level of smart enforcement, promoting consistency and adherence to EU law across Member States.

4. Price comparison

It is important to underline that price comparison, as a practice, is already governed by existing regulation within the European Union. Specifically Article 6 of the UCPD (*Misleading actions*) serves as the cornerstone for the regulation of price comparisons. This article includes rules and guidelines aimed at preventing deceptive or unfair commercial practices and, notably, provisions that address price comparisons that may mislead consumers.

However, despite the established framework provided by the UCPD, several Member States have imposed restrictions on certain aspects of price comparisons, prohibiting the use of crossed-out prices and the display of value or percentage discounts in such comparisons. Similarly, there is a high degree of fragmentation across Member States related to the legal conditions required for the use of Recommended Resale Prices (RRPs). This may jeopardise existing price comparison-based business models because some (national) legislators are contemplating further restrictions on this practice.

In practical terms, the following Member States have chosen to embark on differing interpretations of this provision. In France and Portugal, price comparisons are allowed only as long as the price of reference is that of a third party. In Belgium and Poland, regulatory guidelines state that crossed-out prices and a display of value or % cannot be used for price comparison. Belgian authorities also tend to assimilate “price comparisons” to “comparative advertising”. Those interpretations are not compatible with the UCPD’s case-by-case approach and shall be considered a breach to the UCPD maximum harmonisation.

We are concerned by the difficulty companies have in designing one-size-fits-all solutions for cross-border campaigns. They must invest significant resources in ensuring compliance as well as in working with externals to develop bespoke solutions for each Member State. In the future, this may lead to further fragmentation of the Single Market.

We also fear that diverging national interpretations/rules may in practice prevent some widespread organised and uniform retail networks (i.e. groups of independent retailers and franchise systems) from organising joint low-price campaigns, as these, due to competition law restraints, have to be based on price comparisons (e.g. using the recommended retail price, or recommended price in the network). Such restrictions would contradict the new [EU Guidelines on Vertical Restraints](#)⁸ and the EU guidance on the interpretation and application of Article 6a of the PID.

⁸ See para 197 of the EU Vertical Guidelines, which explicitly allow coordinated short-term low price campaigns in uniform distribution networks.



We recommend:

- The Commission to **discuss with relevant Member States the scope of the PID and its link to the UCPD** and, where necessary, ensure EU law is respected and well-transposed across the EU, and start infringement procedures if necessary.
- **Clarifying this issue in the Omnibus Review Report** establishing that in cases where price comparisons are misleading, the UCPD already applies through a case-by-case approach. Art. 12 of the UCPD states that each trader/professional shall “furnish evidence as to the accuracy of factual claims in relation to a commercial practice”. This means that in case of control by a national authority, a trader announcing a price comparison without being able to explain and document the fairness and reality of its claim is breaching the UCPD.
- **Clarifying** that traders may compare their prices against other prices, both as standalone comparisons and in conjunction with other comparisons (whether to the prior price, where applicable, or other reference prices), provided that the nature of the price comparison is clearly stated, and the price comparison is not misleading.
- **Amending the UCPD guidance** by focussing on the accountability of companies responsible for using price comparisons, addressing issues of integrity, fairness, and the need for clear justifications of the claims made. Moreover, it would underline the seller's responsibility to ensure that the nature of the price advantage is effectively communicated to consumers, making it comprehensible and transparent through a clear indication of the price reference.

5. Diverging rules & definitions on exempted products

Article 6a(3) of the PID allows Member States to establish distinct rules for products that are prone to rapid deterioration or expiration. For example, in Denmark the limit is set to 14 days. Diverging implementation, national definitions of exempted products, and length of exemption periods have significant implications on cross-border trade, compliance, and the need for case-by-case assessments.

The Commission guidance emphasises the importance of assessing compliance with the objective criteria of such products liable to deteriorate or expire rapidly on a case-by-case basis. This implies that the determination of whether a product qualifies for exemption should be made after considering its specific attributes and characteristics. For instance, it was exemplified that goods like fresh food and beverages with short expiry periods are examples of items susceptible to rapid deterioration. The guidance further mentions that ambiguity arises concerning products that might "expire" only in a commercial sense, such as seasonal clothing, rather than due to inherent physical properties, whereas this distinction is at the crux of the issue. The problem is further exacerbated because some Member States implemented additional rules and others did not. The products that are exempted vary from one country to another and national definitions of what for example a perishable product is differ widely.

For example, in France the exemption for old collections does not apply. However, for perishable goods there is a total exemption. Germany, Italy and Spain also offer a total exemption for perishable goods. Another category of issues comes from the different interpretation of what exactly qualifies as perishable goods. In Portugal that is limited to agricultural products, but in Germany that applies to long shelf-life goods. In Sweden, a distinction is made between goods that can quickly deteriorate and those that are likely to deteriorate. In Finland, the exemption for rapidly expiring goods has been implemented, but in a very narrow manner which in practice only exempts fresh food.

Such market fragmentation creates substantial legal uncertainty for cross-border traders which may lead to less promotions and choice for consumers. It increased compliance burdens on businesses operating across Member States.



We recommend:

- **To urgently streamline the list of exempted products and establish a common understanding of which products qualify for exemption, when and for how long in the Commission's guidance.**

6. Diverging interpretation by national authorities

The significance of this issue cannot be overstated, as legal certainty is a vital aspect of any fair, transparent, and functional marketplace. Without it, businesses and consumers alike face uncertainty and potentially unequal treatment. For this reason, we find crucial to underline that retailers face difficulties across Member States due to the diverse and, at times, diverging interpretations and applications of regulations by national authorities across different EU countries. The lack of consistent enforcement of regulations raises questions about equal treatment and the overarching principles of the EU's Single Market.

For instance, in the Czech Republic, the application of regulations has been notably stricter, potentially subjecting businesses to more stringent compliance requirements. In Poland, the PID has been applied to certain conditional offers that fall outside the scope of the Commission's guidance, creating further confusion and inconsistencies. In Romania, the presence of divergent interpretations by local authorities only exacerbates the issue, contributing to legal uncertainty and potential difficulties for businesses navigating these disparities. Conversely, in Sweden, there is a distinct interpretation regarding the definition of the prior price, which is considered the lowest price when there has been no price reduction in the last 30 days. In other jurisdictions, there are differences in how the use of RRP's is regulated or how the exemptions from the prior price rules are applied.

In the same vein follow the different ways in which Member States transpose and interpret legal acts, such as the UCPD and PID, resulting in an overly complex landscape for traders wishing to execute uniform price reduction campaigns on an EU scale.

We recommend:

- To encourage **Member States to implement a maximum harmonisation approach in specific areas of price reduction regulations**. Industry stakeholders could cooperate and provide input in order to align regulatory approaches with the aim of promoting consistency and facilitating cross-border trade to empower businesses and cater to a broader European audience.
- The Commission, **in collaboration with the CPC network and other relevant stakeholders, facilitate a dialogue with national authorities to work towards a more unified interpretation and application of regulations**. Such a dialogue could serve to harmonise practices, foster cooperation, and enhance consistency in the enforcement of EU-wide regulations.
- The Commission **compiles a comprehensive overview of the divergent rules and regulations regarding price reduction announcements across the EU to make it easier for traders to be compliant**. This overview should then be made accessible online and continuously updated to ensure that all stakeholders, including traders, have access to the latest information. This comprehensive database would serve as a valuable resource for traders seeking to navigate the complex regulatory landscape, aiding them to remain compliant and fostering a more uniform approach to their marketing and sales campaigns.



The undersigned associations and their members wish to stress the importance of having a predictable, clear and consistent legal framework, that supports businesses to scale up, creates a level playing field and ensures consumers are protected. Cross-border trade is a core component for businesses that wish to grow and thus become European champions. We stand ready to support the European Commission and the Member States in the process of providing more clarity and working towards a common understanding of the issues at hand.