Ecommerce Europe’s Paper on the interpretation of price reduction rules under the Omnibus Directive

1. Introduction

Ecommerce Europe has closely followed and proactively engaged in the legislative process that led to the adoption of the Directive on better enforcement and modernisation of Union consumer protection rules (Omnibus Directive). Now time has come to ensure that the new rules will be transposed in the Member States’ national systems in a balanced and as much as possible harmonized way, to avoid further segmentation of the Single Market.

In particular, this paper addresses a new provision covering the announcement of price reductions. The new provision was included in the Omnibus Directive only at a very late stage of the negotiations and without any recitals. Its text may be subject to various interpretations, with potential far-reaching negative consequences for digital retailers if not transposed and interpreted appropriately. The paper takes into account business practices and information gathered from the members of Ecommerce Europe, as well as discussions held with the European Commission’s DG JUST in the past months.

The purpose of this paper is to support the work of the European Commission in view of the transposition workshops that will be organized at the beginning of 2020 and inform Member States about the potential risks for digital retailers if the text is not transposed in a clear and balanced way.

Article 6a PID

1. Any announcement of 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. Prior price shall mean the lowest price applied by the trader during a period of time which may not be shorter than one month 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 shorter periods 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 price reduction before the first application of the price reduction.

2. Scope

2.1. General remarks

As the provision lacks legal clarity, it is of utmost importance to clarify its scope. In Ecommerce Europe’s opinion, this provision should obviously apply only when there is an announcement of a price reduction by one and the same trader.

Ecommerce Europe also wants to stress that the same announcement of price reduction repeated the day(s) after should not be seen as a new announcement of price reduction.

2.2. General discounts

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1 Directive [add reference number], Article 2 Amendments to Directive 98/6/EC introducing a new Article 6a
In our opinion, the provision should not apply in the case of general discounts on all products, for instance when a retailer announces a 20% reduction on all products, because these discounts are not product-specific as such, as the reduction applies to all products and for the actual prices of the products.

If Article 6a also applies to general discounts, then retailers would always have to quote the previous price, which, according to paragraph 2, must be the lowest price in the last 30 days. This would confuse consumers, as they might not understand to which price the 20% discount refers and it would mean considerable effort for the merchants.

According to the previous logic of the Price Indication Directive, this law is not applicable on general discounts, so that traders do not have to specify the new reference price for all their products, but can indicate the actual price on the products on which the reduction will be applicable. The reason for this interpretation of the rule is that retailers do not have to exchange all price tags in a shop if they apply a 20% discount on all products.

Therefore, we believe that Article 6a should not apply to general discounts.

### 2.3. Online event sales businesses

The business model of online event sales normally works by allowing retailers to market discounted producers’ goods or services directly to the consumers, with producers receiving a portion of the retailer’s profit. This allows retailers to build brand loyalty and quickly sell surplus inventory, also avoiding destruction of stocks. Online event sales businesses develop deals significantly discounted compared to recommended retail prices. Such sellers and others using comparable business models, did not sell these goods before and thus do not have a reference price as meant in Article 6a. They mostly refer to usual prices of competitors who did sell these products or to recommended prices.

In our opinion, such online sales event businesses should be out of scope of this provision because these businesses do not actually practice a “price reduction” but a “price comparison” between the recommended retail price (or price recommended by the producer) and the price applied by the online sales event businesses.

Therefore, when implementing this provision in national legislation, Member States should take into account the distinction between “prior price” and “comparison price”, as these businesses do not practice “a prior price” and therefore should not be in the scope of Article 6a PID.

At the same time, Ecommerce Europe stresses the importance of ensuring that consumers are not misled. Therefore, these businesses - although not subject to the new Article 6a PID - should inform consumers, in a clear and transparent way, that the crossed price they show in their webshops is actually the recommended retail price (or price suggested by the producer) or the price actually used by competitors. In other words, these businesses should put an emphasis on the fact that they announce a “price comparison” and not a “price reduction”. As a consequence, we agree on the fact that this missing information on the character of the referred price might constitute an unfair commercial practice towards the consumer.

### 3. Progressively increased price reduction

Progressively increased price reduction is a commonly used promotional method in sales. The sale starts, for instance, with a 40% reduction and increases progressively to 70% during the sales period. Article 6a Paragraph 5 allows Member States to provide in their national legislation that, when the price reduction is progressively increased, the prior price is the price without price reduction before the first application of the price reduction.
Ecommerce Europe is convinced that all traders in the EU should be able to benefit from this logic rule. Therefore, we call on the European Commission to recommend all Member States to introduce Article 6a Paragraph 5 in their national legislation systems, also to avoid further fragmentation of the Single Market.

4. Recurrent price reduction actions within a 30-day time period

Ecommerce Europe wants to highlight the issue of complying with the new provision when traders have more than one price reduction action within a 30-day period. For instance, in specific periods of the year, it is normal practice for retailers to announce several price reduction actions within the minimum period of 30 days, for example Black Friday, followed by Christmas’ announcements of price reductions.

In these cases, in Ecommerce Europe’s opinion, it is unfair to oblige traders to refer to the lowest reduced price practiced in a previous discount action. In other words, in these cases, the “prior price” referred to should be the lowest “full” price practiced in the last 30 days, thus excluding promotion actions that lasted for a short period of time, such as one or some days around Black Friday, from the reference price.

We thus strongly recommend the European Commission to clarify, in its Guidance, that “prior price” and “lowest price” in Article 6a paragraph 1 and 2 do not include other explicit short-time promotional actions with reduced prices that took place in the last 30 days, but shall only refer to the lowest “regular price” in that period.

5. Early transposition by Member States

According to the information gathered by Ecommerce Europe, some Member States are already taking actions to transpose the Omnibus Directive into national legislation. Even though the Commission cannot prevent Member States to transpose the Directive faster than others, Ecommerce Europe calls on the Commission to keep an open dialogue with these Countries and stress the importance of attending Commission’s transposition workshops in February/March 2020 before starting to transpose the new law, and thus avoid national misinterpretation of Article 6a PID.


Ecommerce Europe wants to stress the importance of having clear Guidance from the European Commission covering Article 6a on price reductions. As the Commission will anyway have to update its Guidance on the Consumer Rights Directive and its Guidance on the Unfair Commercial Practices Directive (UCPD), Guidance on this specific article could for instance be also included in the UCPD Guidance.

7. Conclusion

Ecommerce Europe and its members stand ready to support the European Commission and Member States in the process of transposition of the Omnibus Directive into national legislations. For any questions on our contribution, please send Ecommerce Europe an e-mail.

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**About Ecommerce Europe**

Ecommerce Europe is the sole voice of the European Digital Commerce sector. As a result of joining forces with EMOTA, Ecommerce Europe now represents, via its 23 national associations, more than 100,000 companies selling goods and services online to consumers in Europe. Ecommerce Europe acts at European level to help legislators create a better framework for online merchants, so that their sales can grow further.