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ON SALE: new rules for announcing price reductions

March 2022

Imagine ...

Spring is just around the corner, and once again it's time to organise the annual Easter campaign. You sit down with the commercial team to discuss the planning, and it is quickly agreed to stick with last year's strategy. To encourage the early birds, the Easter eggs and decorations will be positioned in the stores six weeks before Easter. As of Easter Monday, all Easter articles will be offered at a 40% discount for the following two weeks. After that, to bring things to a close, the remaining goods will be sold at a 60% discount. In the car on the way to work this morning you hit on another clever way to give the turnover an extra boost: how about raising the price of the Easter eggs by 20% just a few days before Easter? After all, at that point the consumers tend to be a bit less price sensitive. And as a result, the discounts given *after* Easter will also have less of an impact. When you proudly present your idea, you draw an immediate response from your colleague in the legal department. She says that strategies like that will not hold up under the new rules for announcements of price reductions that will soon be entering into effect. This is news to you, so of course you want to know all about it. What changes do these regulations entail for conducting promotional campaigns?

A brief clarification

In 2019 the European Parliament and the Council adopted the 'Omnibus Directive' which, amongst

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other things, redraws the regulatory framework for announcements of price reductions. The Member States had until 28 November 2021 to transpose the directive into national law, although a number of them – including Belgium, the Netherlands and Italy – failed to meet that deadline and are still working on the transposition. In principle, the rules will enter into effect on 28 May 2022.

As soon as the rules apply, companies must accompany an announcement of a price reduction to consumers with the mention of a reference price. This reference price is the lowest price that applied during a period of at least 30 days prior to the application of the price reduction. Moreover, the price reduction must be calculated on the basis of this reference price. This prevents companies from artificially raising prices before they announce a price reduction, thus misleading consumers about the genuine amount of the price reduction.

Under the new rules, an **announcement of a price reduction** is any communication or ‘promotional statement’ of a company about the reduction in price for a certain product. This can take the form of a general announcement of a price reduction, e.g. “40% discount on all Easter articles”, but also of a specific discount percentage or amount, or of a mention of a new lower price together with a (possibly crossed-out) mention of the earlier price. Price techniques that do *not* constitute a price reduction, such as a price comparison or conditional offers (e.g. “1+1 free, second at 50%”), do not fall under the obligation.

The **reference price** that must be mentioned with the announcement and which thus in principle is the lowest price of at least the past 30 days, must be determined per sales channel/point of sale. If a company has multiple sales channels or points of sale, the correct reference price must be defined and communicated for each separate sales channel or point of sale.

The Omnibus Directive gives Member States the possibility of **departing from the general rule** in a number of specific situations, e.g. for goods that are liable to deterioration, newly introduced goods, and successive (increasing) price reductions.

The Member States are firstly free to define different rules for **goods which are liable to deteriorate or expire rapidly**. After all, such goods will by their very nature more often be sold with discounts in order to promote sales ahead of an upcoming expiration date. For example, in Germany for this type of products companies are not obliged to mention the reference price when it is made clear to the consumer in an appropriate way that the price reduction is due to the approaching use-by date or impending deterioration.

In addition, the national rules may shorten the standard period of 30 days for announcements of price reductions for **‘new arrivals’ goods**, i.e. goods that the company has been selling for fewer than 30 days prior to the announcement of the price reduction. Products that a company is offering once again after a period of interruption, such as seasonal goods, do not fall within this category.

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Finally, national rules can allow that, in the case of a **gradual reduction of the price of a product without interruptions**, such as is often the case during the sale period, the price that applied at the start of the sales campaign is indicated as reference price. Suppose that in a sale period a 20% discount is given during the first week, the next week 30% and in the third week 40%. In that case, the lowest price during a period of at least 30 days prior to the start of the sale period may be taken as the reference price. Successive sales campaigns do not fall under this exception.

Concretely

- Each company that conducts promotions in a B2C context must take account of the new regulations on announcements of price reductions.
- The general rule is that a price reduction must be announced on the basis of the lowest price from at least the past 30 days. The rule does not apply if you do not announce a price reduction, but rather e.g. engage in price comparison or make a conditional offer.
- Several Member States have not yet transposed the directive into their national legislation. Nevertheless, it is always important to check what the national legislation provides, since this can differ from country to country. For example, a country can, but does not have to, make use of the possibility of providing for an exceptional regime for goods which are liable to deteriorate or expire rapidly, 'new arrivals' goods and progressive price reductions.

Want to know more?

- The Omnibus Directive itself can be consulted [here](#).
- For the Commission's Guidance on the application of the new provision on the indication of price in the context of announcements of price reductions, see [this link](#).
- Information on the directive's transposition status in the various EU Member States can be found [here](#).