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The New Code of Conduct for sales promotions and the communication of price reductions

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Introduction

On 21.04.2023, a new Code of Conduct for sales promotions and the communication of price reductions (in particular regarding offers/discounts promotions) (the **'Code'**) has been issued by the Ministry of Development and Investment by virtue of Ministerial Decision 35935 (GG' B 2640/21.04.2023).

Said Code was adopted following the amendment, by virtue of Law 5039/2023 (GG A' 83/2023), of the provision of Article 15 para. 2a of Law 4177/2013 (the **'Law'**) on 'price reduction announcements', enacting Article 2 para. 1 of Directive (EU) 2019/2161 as regards the better enforcement and modernization of Union consumer protection rules¹ (**'Omnibus Directive'**).

Object

The aim of the Code is to provide useful advice and guidelines to businesses regarding the proper way of communication of price reductions and price promotions by the traders to consumers during sales, promotional offers, etc. also by way of practical examples and pictograms, in order to facilitate and ensure

businesses compliance with the regulatory framework.

Moreover, the Code emphasizes the interplay between 'price reduction announcements' and the Unfair Commercial Practices Directive² ('UCBD') and provides examples of fair commercial practices in order to showcase unfair and misleading commercial practices especially regarding misleading claims about the existence of price advantages.

Regulatory framework regarding 'price reduction announcements'

Pursuant to Article 15 para. 2a of Law 4177/2013, implementing Article 2 para. 1 of the Omnibus Directive *'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. 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. Where the product has been on the market for less than 30 days, the prior price is defined as the lowest price applied by the trader during a period of time of 10 days prior to the application of the price reduction. When the price reduction is progressively increased, the prior*

¹ 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.

² 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](#)).

price is the price without the price reduction before the first application of the price reduction’.

The purpose of the aforementioned provision is to address the issue of transparency of price reductions preventing traders from artificially inflating the reference price and/or misleading consumers about the amount of the discount³.

What is a ‘price reduction announcement’?

The notion of ‘*price reduction announcement*’ refers to any statements by the trader that it has reduced the price that it charges for the good(s) or the service(s).

By way of example price reduction could be announced⁴:

- **in terms of percentage (%)**, e.g., ‘30 % off’;
- **in terms of specific amount**, e.g., ‘EUR 20 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~~’;

Announcements such as ‘**sales’ price**, ‘**special offers**’ or ‘**Black Friday offers**’ that create the impression of a price reduction fall also within the scope of the Code and the ‘prior’ price has to be indicated for the goods concerned by the announcement.

The Code also specifies that price reduction announcements may either concern **a specific**

good(s) in the trader’s offer or a **general price reduction announcement**⁵.

Practical examples of practices which do not constitute ‘price reduction announcements’

On the other hand, the following do not constitute ‘price reduction announcements’⁶:

- **general marketing claims comparing trader’s price with other traders’ prices without invoking or creating the impression of a price reduction**, e.g., ‘best/lowest prices’;
- **Loyalty programmes and personalised price reductions**, e.g., discount cards or vouchers or a reduction granted on special occasions for that consumer, such as birthday⁷;
- **tied (conditional) offers**, e.g. ‘buy one, get two’ or ‘30 % off when buying three’.

Such practices promoting price advantages, are not deemed as ‘price reduction announcements’, however, they may be assessed under the provisions of Articles 9a *et seq.* of Law 2251/1994 on the protection of consumer, implementing the respective provisions of UCBD.

The general rule applicable on ‘price reduction announcements’

According to the Code, the trader who announces a price reduction is required to indicate the ‘prior’ price. The ‘prior’ price is defined as **the lowest price applied by the same trader during a period of time not shorter than**

³ See [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, \(2021/C 526/02\)](#).

⁴ See Section 3.2 of the Code.

⁵ See para. 10 of the Code.

⁶ See para. 12 of the Code.

⁷ In contrast, price reductions, which, even though presented as personalised, are in **reality offered/announced to consumers in general** (e.g., 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) constitute ‘price reduction announcements’.

30 days prior to the application of the price reduction⁸.

Thus, 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.

E.g., 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.

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 consumers⁹.

Duration of the 'price reduction'

Regarding the **duration of the price reduction**, it is worth noting that the Law does not require the traders to indicate for **how long they have applied the indicated 'prior' price**¹⁰. 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.

Accordingly, traders are not prevented from extending a price reduction campaign provided that 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.

In this vein, the Code highlights that excessively long price reduction periods may be assessed under the provisions of Articles 9a *et seq.* of the Consumer Protection Law regarding unfair commercial practices.

Moreover, where a trader sells goods through different sales channels/points of sale (e.g., brick-and mortar / eshops) at different prices, the trader must indicate as 'prior' price for the relevant goods in each sales channel, the lowest price that it applied in that respective sales channel during at least 30 past days¹¹.

Other provisions

The Code provides also guidance in the form of practical examples and pictograms *inter alia* regarding **progressive price reductions, successive sales campaigns**¹², **the interplay with the UCPD in case of misleading claims about the existence of price advantage, as well as other cases of specific price reduction announcements.**

Competent Authorities – Sanctions

'Price reduction' announcements infringements

As regards the monitoring of compliance with the provision of Article 15 par. 2a of the Law on '**price reduction announcements**', according to the Code, the Interagency for Market Control ('DIMEA' as per its Greek initials) shall be the competent Authority imposing the sanctions provided in Article 21 para. 2 of the Law¹³.

Fines of up to two percent (2%) of the annual turnover and in any case not less than twenty thousand (20,000) euros shall be imposed on

⁸ See Section 3.3.1 of the Code.

⁹ See [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, \(2021/C 526/02\)](#).

¹⁰ See para. 18 of the Code.

¹¹ See para. 14 of the Code.

¹² In the context of successive sales campaigns, the price is increased in intermittent (short) periods.

¹³ See Section 4.9 of the Code.

the offending trader. In case of recidivism, i.e., where the trader is fined a second time for the same infringement within a period of five (5) years, **the maximum fine shall be increased to four percent (4%) of the trader's annual turnover.**

Unfair commercial practices infringements

Regarding the monitoring of compliance with the provisions of 9a *et seq.* of the Consumer Protection Law regarding unfair commercial practices, the **General Secretariat of Commerce of the Ministry of Development and Investment** and in particular the **General Secretariat of Commerce & Consumer Protection** shall be the competent Authority imposing the following actions stipulated in Article 13a para. 2 of the Consumer Protection Law, namely:

- recommendation;
- fines from **5,000** to **1.500.000** euros. In case more than one fine decisions have been issued against the same company within a period of 5 years, the maximum fine limit shall be of **3,000.000** euros.

Final remarks

The new Code provides legal certainty for the businesses regarding the proper announcement of 'price reductions' and ensures for the first time that consumers actually pay less for the goods when a price reduction is announced. It remains to be seen what practical questions will ensue and how the competent Authorities shall enforce and monitor compliance with the aforementioned provisions.

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