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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**on the implementation of 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**

## 1. Introduction

Directive (EU) 2019/2161 of the European Parliament and of the Council 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<sup>1</sup> (the ‘Modernisation Directive’) was adopted on 27 November 2019. It amended four existing consumer law directives – the Unfair Contract Terms Directive 93/13/EEC<sup>2</sup> (the ‘UCTD’), the Price Indication Directive 98/6/EC<sup>3</sup> (the ‘PID’), the Unfair Commercial Practices Directive 2005/29/EC<sup>4</sup> (the ‘UCPD’) and the Consumer Rights Directive 2011/83/EU<sup>5</sup> (the ‘CRD’).

The Modernisation Directive responded to the shortcomings identified in the 2017 Fitness Check and the parallel evaluation of the CRD<sup>6</sup>. It aimed at strengthening the enforcement of EU consumer protection rules and updating rules in line with the development of digitalisation. Alongside the proposal for the Modernisation Directive, the European Commission made a proposal on representative actions for the protection of the collective interest of consumers. This became law in 2020<sup>7</sup>.

The Modernisation Directive had to be **transposed into national law by 28 November 2021 and become applicable in Member States from 28 May 2022**. It includes a review clause stipulating a report to the European Parliament and the Council on its application by May 2024. The review was to include an assessment of the provisions concerning events organised at places other than the trader’s business premises, and concerning goods marketed as identical but having significantly different composition or characteristics (‘dual quality’ marketing).

This report covers a period of 2 years after the date on which national laws transposing the Modernisation Directive were supposed to become applicable (28 May 2022). In practice, for many Member States, the data available covers a shorter period, due to transposition delays. The Directive is therefore still in a relatively early stage of application, which has implications for how the data on implementation presented in this report should be interpreted. The number of formal enforcement decisions or proceedings related to the Modernisation Directive is limited. So far

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<sup>1</sup> OJ L 328, 18.12.2019, p. 7.

<sup>2</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

<sup>3</sup> 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 (OJ L 80, 18.3.1998, p. 27).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> For further information: <https://ec.europa.eu/newsroom/just/items/59332>.

<sup>7</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

there has been no case law of the Court of Justice of the EU on its application, apart from one pending preliminary ruling case on the new provision of the PID concerning price reductions<sup>8</sup>.

This report was prepared in parallel with the ongoing Fitness Check of EU consumer law on digital fairness (the ‘Fitness Check’)<sup>9</sup>, launched in May 2022 to determine whether the key horizontal consumer law instruments remain adequate for ensuring a high level of consumer protection in the digital environment (digital fairness). The outcome of the Fitness Check will be presented in a separate report, to be published in the second half of 2024.

## 2. Main elements of the Modernisation Directive

The Modernisation Directive made targeted amendments to the UCPD, the UCTD, the CRD and the PID. The Directive introduced the following main amendments:

- **Strengthened rules on penalties** for infringements of the four directives.
- New EU right to **individual remedies for consumers** who are harmed by unfair commercial practices prohibited by the UCPD.
- Prohibition of specific **unfair online practices** (additions to the UCPD Annex I (‘blacklist’)) regarding:
  - consumer reviews;
  - advertising and paid placements in search results;
  - resale of event tickets.
- **New transparency requirements** (amendments to the UCPD and CRD):
  - about the main parameters determining the ranking of online search results;
  - about whether the contract is concluded with a trader or an individual on an online marketplace;
  - about the measures taken to ensure that published consumer reviews originate from consumers who actually used or purchased the product.
- Extension of the **application of the CRD to ‘free’ digital services** for which consumers do not pay money but provide personal data, such as cloud storage, social media and email services.
- **Transparency of personalised pricing**: obligation in the CRD to alert consumers when presenting them with a price personalised on the basis of automated processing.
- **‘Dual quality’ marketing**: amendment to the UCPD prohibiting misleading presentation of goods as being identical to goods marketed in other Member States when those goods have significant differences in their composition or characteristics.
- **Transparency of price reductions**: amendment to the PID requiring sellers announcing a price reduction to also indicate their lowest price in the past 30 days.

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<sup>8</sup> Case C-330/23, *Aldi Süd*.

<sup>9</sup>[https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13413-Digital-fairness-fitness-check-on-EU-consumer-law\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13413-Digital-fairness-fitness-check-on-EU-consumer-law_en)

Following the adoption of the Modernisation Directive, in December 2021 the Commission published updated Guidance notices on the UCPD and the CRD that address the amendments made as well as a separate new Guidance notice on the new PID provision on price reductions<sup>10</sup>.

### 3. Transposition and conformity assessment

Article 7 of the Modernisation Directive required Member States to adopt and publish the measures necessary to comply with the Directive by 28 November 2021 and to apply the measures from 28 May 2022.

In the course of 2020, the Commission ran three transposition workshops to assist Member States to adopt the necessary legislation. Five Member States adopted and communicated to the Commission complete national transposition measures before the transposition deadline of 28 November 2021. In January 2022, the Commission opened formal infringement procedures against 22 Member States that had not notified any transposition measures or had notified only partial transposition measures. A number of reasoned opinions followed in the course of 2022. More than half of the Member States notified complete transposition of the Directive after its date of application in May 2022. In the first half of 2023, all Member States but one had notified the Commission of the complete transposition of the Directive. The last Member State notified complete transposition on 29 May 2024.

The Commission has assessed the conformity of the transposition of the Modernisation Directive. Since the end of 2023, the Commission opened nine targeted dialogues<sup>11</sup> with relevant national authorities to clarify the identified transposition issues and dialogues with other Member States will be opened soon.

Among the issues identified, the most recurrent ones concern the transposition of the provisions on individual consumer redress in the UCPD and of the reinforced rules on penalties in UCTD, UCPD and CRD. Unlike most other provisions of the Modernisation Directive that are usually transposed verbatim in the corresponding national rules, the transposition of the provisions on remedies and penalties in many cases involved changes to multiple national rules. Furthermore, the transposition check has shown some issues with the transposition of the new Article 6a of the PID on price reduction announcements. Some Member States appear to have extended the scope of their transposition provisions to cover not only goods but also services that are outside the scope of the new Article 6a and of the PID as such. These and other transposition issues are discussed in further detail in the following thematic sections.

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<sup>10</sup> Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (OJ C 526, 29.12.2021, p. 1). Commission notice – Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights (OJ C 525, 29.12.2021, p. 1). 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 (OJ C 526, 29.12.2021, p. 130).

<sup>11</sup> EU Pilot cases.

## 4. Application and enforcement

The fact-finding activities on the implementation of the Directive for the purposes of this report took place mostly in 2023, i.e. at a relative early stage of its application. Therefore, they do not provide a complete and definite picture. There is also limited experience of the enforcement of the Directive by the national authorities and courts.

The implementation analysis is based on several information sources. As regards compliance by traders, the report refers to the relevant online ‘sweeps’ carried out by the national enforcement authorities and coordinated by the Commission within the framework of the Consumer Protection Cooperation (CPC) network established by Regulation (EU) 2017/2394<sup>12</sup> (the ‘CPC network’). The report also uses the available public information about the relevant monitoring activities and formal enforcement actions by the national authorities and the reports and research provided by stakeholders.

As part of an external supporting study<sup>13</sup> (the ‘supporting study’) for the Fitness Check and this report, a consumer survey was carried out on a sample of 10 000 respondents covering 10 Member States (Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain and Sweden)<sup>14</sup>. In addition, a targeted survey<sup>15</sup> was conducted gathering views of various stakeholders (businesses, consumer associations, Ministries and enforcement authorities, etc.) across all Member States (the ‘stakeholder survey’) on specific questions. Additional interviews were conducted with selected consumer and trade associations, enforcement authorities and ministries. The preparation of the report was discussed with the Member States in the meetings of the Commission’s Expert Group on consumer law. Specific topics of the Modernisation Directive,

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<sup>12</sup> 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. For more details on the CPC activities in 2020–2021, see the CPC biennial report: [https://commission.europa.eu/system/files/2022-04/swd\\_2022\\_108\\_f1\\_staff\\_working\\_paper\\_en\\_v3\\_p1\\_1903309.pdf](https://commission.europa.eu/system/files/2022-04/swd_2022_108_f1_staff_working_paper_en_v3_p1_1903309.pdf).

<sup>13</sup> Study to support the Fitness Check of EU consumer law on digital fairness and the report on the application of the Modernisation Directive (EU) 2019/2161. The study was carried out for DG JUST under Framework Contract JUST/2020/PR/03/0001 by the Centre for Strategy and Evaluation Services (CSES), supported by VVA (now: Ernst & Young) and Tetra Tech. In addition, further organisations supported the analysis in specialist areas (WIK and LE Europe).

<sup>14</sup> The results can be considered representative in terms of sample size, covering different EU regions and allowing, to the extent possible, extrapolation to the EU-27. For the consumer survey, a pre-established large-scale panel was chosen to ensure that a high survey response is achieved with strong representativeness according to different parameters, such as age and gender.

<sup>15</sup> The targeted (stakeholder) survey was conducted using an online survey tool. Of the total **164 respondents**, **business associations** (EU level and national) accounted for 40.2%, n=66; **consumer associations** (EU level and national) – 17.7%, n=29; **national ministries** – 6.1%, n=10; **national enforcement authorities** – 12.2%, n=20; **ECC-Net**, 6.1%, n = 10, **individual traders** – 10.4%, n=17. Academic researchers and others contributed the remaining 13.4% (n=22). **National enforcement authorities and national ministries** (total n=30) represented **18 Member States**: 3 from Austria, 4 from Slovenia; 2 from each of Belgium, Bulgaria, Denmark, Netherlands, Romania, Slovakia; and 1 from each of Croatia, Cyprus, Czechia, Finland, Hungary, Ireland, Lithuania, Poland, Spain and Sweden; 1 represented ‘Other’ country. Among the **consumer associations** (n=19), 4 were EU-level associations and the national ones represented **8 Member States**: 6 were from Austria, 3 from Germany and 1 from each of Croatia, France, Italy, Portugal, Romania and Slovakia. Among the **66 business associations**, 32 were EU-level associations and the national ones represented **11 Member States**: 12 from Germany, 6 from Belgium, 5 from Italy, 2 from France and Sweden, and 1 from each of Austria, Bulgaria, Czechia, Finland, Netherlands, Spain; 1 represented ‘Other’ country.

especially the provisions on price reductions and dual quality, were discussed at several bilateral and multilateral meetings with stakeholders and national authorities.

Finally, as part of the supporting study, compliance tests of selected online traders<sup>16</sup> were carried out on topics relevant to the Directive, including transparency of online marketplaces, ranking transparency of search results, personalised pricing, online consumer reviews, price reduction announcements, and telephone calls at basic rate in passenger transport services. These tests covered a limited number of websites and therefore differ from the large-scale ‘sweeps’ conducted by national authorities in the CPC network.

In addition, the 2021 and 2023 Consumer Conditions Scoreboards (the ‘2021 CCS’ and the ‘2023 CCS’), which were based on, respectively, the 2020 and 2022 Consumer Conditions Surveys<sup>17</sup>, give insights into consumer perceptions with regard to several topics relevant for this analysis, before the entry into application of the Modernisation Directive and shortly after its entry into application (although not in all Member States), for example, into consumers’ experiences with the ranking of search results, consumer reviews and price reductions.

The following thematic sections of this report (sections 5 to 15) provide an overview of the implementation of the main elements of the Modernisation Directive. It is to be noted that data gathering activities under the supporting study for this report took place before the rules of the Digital Services Act (the ‘DSA’)<sup>18</sup> started to apply. The DSA brought about important developments which are referred to in the relevant thematic sections.

## 5. Penalties

To strengthen the public enforcement of EU consumer law across the EU and its deterrent effect, the Modernisation Directive amended the existing rules on penalties in the PID, UCPD and CRD that already required Member States to provide for effective, proportionate and dissuasive

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<sup>16</sup> These compliance tests were carried out on a sample of websites or applications in 10 Member States (the same as for consumer survey) to assess their performance on specific parameters and their compliance with the requirements of the Modernisation Directive. The selection of websites and apps depended primarily on the specifics of the relevant topic that was investigated and their relative importance (e.g., volume of traffic per month in each country covered), covering online marketplaces, e-commerce sites, travel and accommodation, price comparison sites, etc. In practice, researchers browsed websites or used applications, to perform normal tasks, such as looking for products to buy or attempting to subscribe to a service. They collected data on the information that was presented to them and its content and clarity. The compliance tests provided for a qualitative assessment of problems, including researchers’ opinions of the clarity of information, practical examples of problems identified, supported by screenshots. While covering a number of selected websites, each compliance test was different in scope, objective and nature.

<sup>17</sup> 2020 Consumer Conditions Survey, available at [https://commission.europa.eu/document/download/70d38b3e-58ee-4ed9-8017-77af2573bef4\\_en?filename=ccs\\_ppt\\_120321\\_final.pdf](https://commission.europa.eu/document/download/70d38b3e-58ee-4ed9-8017-77af2573bef4_en?filename=ccs_ppt_120321_final.pdf); 2022 Consumer Conditions Survey, available at [https://commission.europa.eu/document/download/ce4eda77-83bb-436a-baee-84e4b4c4f324\\_en?filename=ccs\\_2022\\_country\\_data.pdf](https://commission.europa.eu/document/download/ce4eda77-83bb-436a-baee-84e4b4c4f324_en?filename=ccs_2022_country_data.pdf).

<sup>18</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1). As of 17 February 2024, the DSA rules apply to all platforms. Since the end of August 2023, these rules had already applied to designated platforms with more than 45 million users in the EU (10% of the EU’s population), the so-called Very large online platforms (VLOPs) or Very large online search engines (VLOSEs). In particular, online marketplaces such as Amazon, Aliexpress, Apple AppStore, Google Play, Zalando and more recently Shein and Temu, have been designated as very large online platforms.

penalties. Furthermore, it introduced a new requirement for Member States to provide for such penalties in the UCTD where no such requirement existed before.

The main new feature was the inclusion in the UCPD, CRD and UCTD<sup>19</sup> of the requirement to provide for fines and the setting of their maximum amount for **widespread infringements and for widespread infringements of a Union dimension** when enforcement measures are taken in a coordinated manner under Article 21 of the CPC Regulation<sup>20</sup>. In these cases, Member States have to provide for – as a mandatory element of their rules on penalties – fines of at least up to **4% of the trader’s annual turnover** or up to **EUR 2 million** for situations where the annual turnover cannot be established. These are minimum requirements and Member States retain the possibility to keep or introduce higher maximum fines. As for the application of penalties in general, Member States retain discretion as to the procedure for the imposition of these fines which can be administrative or judicial.

Furthermore, the Modernisation Directive incorporated into the UCPD, UCTD, CRD and PID non-exhaustive and indicative criteria that are to be taken into account for the imposition of penalties, in both domestic and cross-border cases.

The **conformity assessment** of the notified transposition measures regarding these provisions proved to be relatively complex. For example, several Member States had multiple pre-existing national rules on penalties depending on the infringed provision of the Directive in question. This meant that multiple transposition provisions were needed to amend them.

With regard to the fines that can be imposed in cross-border cases in the coordinated actions under Article 21 of the CPC Regulation, almost all Member States have transposed the requirement to provide for a fine of at least up to 4% of trader’s annual turnover or, alternatively, EUR 2 million in respect of infringements subject to CPC coordinated actions. The situation of a few Member States that raised issues or uncertainty is being or will be analysed in the context of the targeted dialogues with Member States.

Some countries also **apply the fine of up to 4% or up to EUR 2 million to other types of infringements** (domestic and cross-border): for example, for infringements of the CRD, Austria applies the fine of up to 4% of annual turnover to all infringements. For infringements of the UCPD, Poland applies the fine up to EUR 2 million to all infringements if turnover information is not available, and Latvia applies the fine of up to 4% of annual turnover to all infringements with a cap of maximum EUR 300 000.

Some countries have **stronger rules going beyond the EUR 2 million rule for infringements subject to the CPC coordinated action**. Where information on the annual turnover is not available, maximum fines for cross-border UCPD infringements subject to such coordinated actions can be up to EUR 5 million in Greece or up to EUR 4 million in Denmark.

Furthermore, some other countries already had or have introduced **maximum fines for all infringements that are higher than those required by the Modernisation Directive** for cross-

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<sup>19</sup> Whereas in UCPD, CRD and PID, the amended articles on penalties built on the existing general requirement to provide for penalties, Article 8b on penalties is a new feature for the UCTD.

<sup>20</sup> The CPC Regulation focuses on cooperation between the national enforcement authorities in cases of widespread infringements harming consumers in several Member States and widespread infringements with a Union dimension. For this type of widespread infringement, national authorities may need to impose effective, proportionate and dissuasive penalties in a coordinated manner.

border infringements subject to the CPC coordinated actions (4% / EUR 2 million). For example, infringements of the UCPD are generally punishable by up to 10% of the trader's annual turnover in the Netherlands and Poland, up to 6% in Belgium and up to 5% in Cyprus. For infringements of the UCTD, for example, Poland provides for a fine of up to 10% of the trader's annual turnover; Cyprus provides for up to 5%.

The new rules on maximum fines for infringements in cross-border cases subject to CPC coordinated enforcement have not yet been applied in practice. Based on feedback received in the context of CPC coordinated actions, some authorities would find it challenging to apply these fines in cases where companies fail to propose appropriate commitments to address the alleged infringements. In particular, neither the CPC Regulation nor the penalty provisions in the directives concerned provide for clear procedures to coordinate the imposition of penalties and to avoid the risk of *ne-bis-in idem* situations where such measures are taken in parallel in different Member States. The Commission is considering reviewing the CPC Regulation, *inter alia* to increase its deterrence effect <sup>21</sup>.

Member States have adopted different approaches to the transposition of the **non-exhaustive and indicative criteria for the imposition of penalties** that was added by the Modernisation Directive to all four amended directives. Some Member States transposed all the criteria on the list (almost) verbatim, while others, given the merely indicative nature of the list, transposed them only partially or relied on the already existing relevant provisions in national law, which often require, for example, considering 'aggravating or mitigating factors' when imposing penalties.

The Modernisation Directive provides **regulatory choices** to the Member States for the application of the new rules on penalties in the UCPD and UCTD. Under the **UCTD** (Article 8b(2)), Member States have the choice to apply the rules on penalties (including the specific provision on fines for infringements subject to the CPC coordinated enforcement) only to one or both of the following situations: (a) where the trader uses contractual terms that are expressly defined as unfair in all circumstances in national law, or (b) where the trader continues to use contractual terms that have been found to be unfair in a final decision. In relation to the **UCPD** (Article 13(3)), Member States may, for national constitutional reasons, decide not to apply the rules on fines for infringements subject to the CPC coordinated enforcement where the trader has infringed solely Article 5 UCPD on professional diligence for the first time.

**The regulatory choice under the UCTD** is used in many Member States. For example, Croatia, Finland, France, Germany and Portugal apply the penalties in both situations provided in the UCTD. Penalties are applied only in cases where the trader uses contractual terms that are expressly defined as unfair in all circumstances in national law, for example in Austria, Czechia and Estonia. Finally, penalties only apply where the trader continues to use contractual terms that have been found to be unfair in a final decision, for example, in Bulgaria, Lithuania, Luxembourg and Sweden.

The regulatory choice under the **UCPD** is used by fewer Member States, for example Austria, Croatia, Finland, France, Germany and Sweden.

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<sup>21</sup> See 'Final report: Information gathering for assisting the European Commission in complying with its obligations under Article 40 ('reporting') of Regulation (EU) 2017/2394 on Consumer Protection Cooperation', available at: <https://op.europa.eu/en/publication-detail/-/publication/f3eb3b4c-e819-11ee-9ea8-01aa75ed71a1/language-en>.



In conclusion, a number of Member States used regulatory options in relation to the new rules on penalties. With a few exceptions, the national laws have correctly transposed the new requirement regarding fines for infringements subject to the CPC coordinated actions, in some cases going beyond the minimum requirements, e.g. by extending their application to all infringements – including domestic ones – of the directives concerned. The rules on maximum fines for infringements in cross-border cases subject to CPC coordinated enforcement have not yet been applied in practice.

## 6. Remedies for consumers under the UCPD

The Modernisation Directive incorporated into the UCPD the **right of consumers to proportionate and effective individual remedies** when they are harmed by unfair commercial practices. Article 11a now requires Member States to ensure that both contractual and non-contractual remedies are available to consumers who have been victims of unfair practices, i.e. compensation for damage, price reduction and termination of the contract. Member States have the discretion to determine the conditions for the application and effects of the remedies. Consumers can enforce these remedies via individual actions or by collective redress actions under the new Representative Actions Directive (EU) 2020/1828, which provides for a procedural mechanism for enforcing collective consumer rights.

As in the case of the rules on penalties, the conformity check of the national provisions transposing Article 11a proved rather complex and gave rise to a number of questions that are being or will be addressed in the targeted dialogues with several Member States. This complexity is due to the fact that consumer remedies were implemented in many Member States partly by introducing new rules and partly by relying on pre-existing civil law remedies provisions. Moreover, the scope and range of the remedies available in several Member States was not clear. The UCPD has a broad scope applying to unfair commercial practices occurring outside any contractual relationship between the trader and consumer and also following the conclusion of a contract and during its execution. Accordingly, the consumer remedies must also be available for infringements concerning all these stages and types of business-to-consumer relations.

Member States adopted **different approaches to transposing Article 11a UCPD**. Some Member States, e.g. Slovenia, Romania and Latvia have introduced (or already had pre-existing) specific provisions in their legislation transposing the UCPD expressly providing for consumers' right to remedies in case of breach of those provisions. Some Member States have specific provisions on remedies in their laws transposing the UCPD which also expressly refer to additional rules in general civil law, such as civil codes, for example in Austria, Croatia, Czechia, Estonia and Germany. Finally, some Member States have notified their general civil law or other provisions on remedies as being applicable to breaches of the national rules transposing the UCPD, for example, France.

A few Member States notified provisions that, besides providing the substantive rights to remedies, **also facilitate their implementation**. For example, in Bulgaria, when consumers claim remedies under general law before a civil court, they do not need to prove that the practice is unfair when the national enforcement authority (Consumer Protection Commission) has already found, in a final order, that a particular practice is unfair. Spain has adopted provisions giving evidentiary value to a previous finding by the authority or a court of an infringement of the UCPD.

In conclusion, most Member States' laws now include rules providing consumers with the right to compensation for damage, price reduction or termination of the contract when they are victims of unfair practices.

## 7. Price reduction announcements

The Modernisation Directive amended the PID by introducing a new Article 6a on price reductions aimed at ensuring that consumers are better informed and can better assess the merits and real advantage of the announced reduction. It requires the sellers of goods who announce a price reduction to indicate the 'prior price', namely 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. As a more specific rule, the new Article 6a takes precedence over the general provisions of the UCPD as regards, in particular, the characteristics of the reference price in price reductions. However, the UCPD with its case-by-case approach remains applicable for assessing other aspects of price reductions that are not expressly regulated in Article 6a PID, such as the duration of the price reduction. Moreover, the UCPD remains the applicable legal basis for assessing the various other types of price promotions that are outside the scope of Article 6a, such as price comparisons.

Paragraphs 3 to 5 of Article 6a provide for regulatory choices **allowing Member States to derogate from the general rule** in case of: (a) goods that are liable to deteriorate or expire rapidly ('perishable' goods), (b) goods that have been on the market for less than 30 days ('new arrivals' goods); and (c) goods for which the price reduction is progressively increased ('progressive discounts').

All Member States **transposed the general rule on the 'prior price'**, maintaining 30 days as the reference period for establishing the 'prior price'. However, although the PID and Article 6a applies only to sale of goods, some Member States **extended the scope of the national provisions on price reductions to also cover services**. The extension of Article 6a to services has raised concerns on the part of industry stakeholders (see below) and the Commission is addressing this through the targeted dialogues with Member States.

The regulatory choices in Article 6a give Member States some flexibility in adapting the national rules to market conditions of specific categories of goods. Many but not all Member States have decided to apply them, which has resulted in some national differences.

The regulatory choice concerning **goods which are liable to deteriorate or expire rapidly ('perishable goods')** in Article 6a(3) allows Member States to provide for different rules for such goods or to exempt them from the scope of Article 6a.

All Member States made use of this regulatory option except Croatia, Ireland and Luxembourg. National provisions implementing Article 6a PID do not apply to 'perishable' goods in Austria, Belgium, Czechia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Spain and Sweden. In Cyprus, Estonia, Malta, the Netherlands, Poland and Slovenia sellers have to indicate, as reference price in price reductions, the price applied before the reduction. Finally, some Member States apply Article 6a to perishable goods but have provided for reduced reference

periods for setting the ‘prior’ price, i.e. in Bulgaria (7 days), Romania (10 days), Denmark (14 days) and Portugal (15 days).

Moreover, the **national rules differ as regards the definition of goods considered as ‘liable to deteriorate or expire rapidly’**. For example:

- In Austria, the regulatory choice applies ‘*where the price reduction is applied as a result of expiry of the date of minimum durability within the meaning of Article 2(2)(r) of Regulation (EU) No 1169/2011*’<sup>22</sup>.
- In Finland, it applies to ‘*highly perishable foodstuffs*’.
- In Germany, it applies to ‘*perishable goods or goods with a short remaining shelf life if the price requested is reduced due to an impending risk of spoilage or an impending expiry of the shelf life and this is made known to the consumer in a suitable manner*’.
- In Italy, it applies ‘*to the perishable agricultural and food products*’ as defined in the specific national legislation.
- In Lithuania, it applies to ‘*perishable products or items which quickly lose their commercial value*’.
- In Spain, it applies to ‘*identical products approaching their expiry date or best-before date*’.
- In Bulgaria, it applies to ‘*goods which are subject to rapid deterioration, or which have a short shelf life*’.
- In Estonia, it applies to ‘*goods that, owing to their nature or level of processing, age or deteriorate rapidly and are likely to become unfit for sale before 30 days have passed from the point at which they are offered for sale*’.
- In the Netherlands, it applies to goods that ‘*are rapidly spoiled or have a limited shelf life*’ as designated by ministerial order.
- In Slovenia, it applies when the goods are just before their expiry date, and to perishable goods.
- In Portugal, ‘perishable agricultural and food products’ mean ‘*agricultural and food products that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing*’.

The regulatory choice regarding **the goods that have been on sale for less than 30 days** (‘**new arrivals**’) in Article 6a(4) enables Member States to allow price reduction announcements also in respect of goods that the trader has been selling for less than 30 days before the announcement of the price reduction. In this respect, Member States may provide for a shorter period of time than 30 days for establishing the ‘prior’ price. Many Member States have chosen to use this possibility except for Croatia, Denmark, Finland, France, Germany, Ireland, Portugal and Sweden.

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<sup>22</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

Among the Member States using the regulatory choice, many define the ‘prior price’ as the lowest price applied by the trader since the goods have been on the market, without stipulating a minimum period, i.e. Austria, Cyprus, Czechia, Greece, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania and Slovenia. Minimum periods are stipulated in Belgium, Bulgaria, Estonia and Latvia (for all – 7 days) and Hungary (15 days).

Finally, under the regulatory choice **for cases where the price reduction is progressively increased** (‘**progressive discounts**’) in Article 6a(5), Member States may provide that, when the price is gradually reduced without interruptions during the same sales campaign, the lowest price during the 30 days before the application of the first price reduction announcement remains the prior price for all subsequent price reduction announcements during the sales campaign. This option is used by almost all Member States, except Poland and Spain.

The implementation of Article 6a PID has proven to be the **most discussed aspect of the Modernisation Directive**, receiving considerable attention from the Member States’ authorities and stakeholders. At the end of 2021, the Commission issued dedicated guidance on Article 6a. In addition, several Member States have adopted **national guidelines** or Q&As, e.g. Belgium<sup>23</sup>, Denmark<sup>24</sup>, Estonia<sup>25</sup>, Finland<sup>26</sup>, France<sup>27</sup>, Ireland<sup>28</sup>, Italy<sup>29</sup>, Lithuania<sup>30</sup>, Poland<sup>31</sup> and Sweden<sup>32</sup>.

The Commission’s guidance clarified, in particular, the non-applicability of the new requirement to the continuous benefits provided in the context of **customer loyalty programmes** (while additional *ad hoc* temporary price reductions for the members of such programmes would be subject to Article 6a), and to **genuine personalised price reductions** that by their nature are not ‘announced’ to consumers at large.

The Commission also made clear its position that, whereas **sellers remain free (subject to respecting the UCPD) to indicate additional reference prices** (such as the regular selling price outside promotional periods) to strengthen the promotional message, **they should refrain from using techniques that would obscure the prior price**, thus preventing consumers from or making it more difficult for them to take due notice of the prior price. Thus, any percentage reductions (e.g. ‘30% off’) or amount reductions (e.g. ‘50 euro off’) that the seller may choose to indicate as the main element of the price reduction announcement should be based on the mandatory ‘prior’ price. However, this interpretation is opposed by many industry stakeholders and is currently

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<sup>23</sup> <https://economie.fgov.be/fr/themes/entreprises/guidance/pratiques-commerciales/annoncer-des-reductions-de>

<sup>24</sup> <https://www.forbrugerombudsmanden.dk/longreads/forbrugerombudsmandens-retningslinjer-for-prismarkedtsfoering/>; <https://www.forbrugerombudsmanden.dk/media/u1bbaaye/forbrugerombudsmandens-retningslinjer-for-prismarkedtsfoering.pdf>

<sup>25</sup> <https://www.ttja.ee/sites/default/files/documents/2022-05/2022.05.04%20-%20Juhend%20-%20Hinna%20avaldamise%20juhend%20%281%29.pdf>

<sup>26</sup> <https://www.kkv.fi/en/consumer-affairs/marketing-sales-and-indicating-prices/discounts/>  
<https://www.kkv.fi/kuluttaja-asiat/tietoa-ja-ohjeita-yrityksille/kuluttaja-asiamiehen-linjaukset/alennus-ja-edullisuusilmaisut-markkinoinnissa/>

<sup>27</sup> <https://www.medef.com/uploads/media/node/0019/100/14563-faq-annoncesreductionprix-medef-31052022.pdf?v=1708695236>

<sup>28</sup> <https://www.cpc.ie/business/help-for-business/guidelines-for-business/price-reductions/>

<sup>29</sup> <https://www.mimit.gov.it/it/assistenza/domande-frequenti/annunci-di-riduzione-di-prezzo-domande-frequenti-faq>

<sup>30</sup> <https://www.vvtat.lt/d.u.k./598#c-6/t-218>

<sup>31</sup> [https://archiwum.uokik.gov.pl/aktualnosci.php?news\\_id=19551](https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=19551)

<sup>32</sup> [Ställningstagande angående information om prissänkningar \(stpubshop.blob.core.windows.net\)](https://www.stallningstagan.se/angående-information-om-prissankningar)

subject to a reference for a preliminary ruling by a German court to the CJEU (Case C-330/23, *Aldi Süd*)<sup>33</sup>.

Since the adoption of the Commission's guidance, the stakeholder discussions on the implementation of Article 6a PID, in particular within the CPC framework, have addressed e.g. **price promotions based on a minimum purchase amount**. The Commission explained in the guidance document that Article 6a does not apply to combined or tied conditional offers, such as 'buy one, get two' or '30% off when buying three'. Such conditional offers continue to be subject to the UCPD. In light of this, it appears justified to **treat in a similar manner promotions based on a minimum purchase amount provided they achieve the same effect as volume-based promotions**, i.e. they apply in practice to purchases of more than a single item offered by the shop. Just like the other alternative promotional techniques, the minimum amount promotion must not be used merely for the purpose of circumventing the application of Article 6a.

Another relevant aspect is the non-applicability of Article 6a to **individual items of goods that are about to expire** and that therefore should be sold quickly in a situation where the good in question is not perishable by its nature (e.g. pasta, preserves or cosmetics that generally have long expiry periods). This question is relevant for the Member State using the regulatory choice to exempt or to provide for different rules on price reductions for 'goods which are liable to deteriorate or expire rapidly'. As Article 6a PID does not define this concept, it appears justified to apply such an exemption also to **individual items of goods that objectively must be sold quickly even if the good in question is not generally 'perishable' by nature**. In practice this means that sellers should be able to discount specific items of, for example, cosmetics that are about to expire, without such reduction affecting future possible general price reductions on the goods concerned.

Another important issue for Member States and stakeholders in the context of Article 6a concerns market developments regarding **other forms of price promotions, in particular price comparisons**. Price comparisons are outside the scope of the new Article 6a and remain subject to the general fairness requirements of the UCPD. According to several national authorities and consumer associations, the use of price comparisons by sellers, especially comparisons with the manufacturer's recommended retail price, has increased after the implementation of the new rules for price reductions under the PID.

**In the CPC framework, as regards compliance with Article 6a, a sweep on price reductions** took place in November 2022. During the sweep, 13 national authorities analysed 16 000 products from 176 websites, monitoring them over a one-month period to establish whether the indicated 'prior' price complied with the new PID legal requirement. The sweep showed that more than half of the products monitored presented a price reduction. **Out of this number, 23% of price reduction announcements breached Article 6a of the PID**. These breaches were found on at least 43% of the screened websites. It has to be noted that not all the Member States concerned

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<sup>33</sup> [CURIA - Case information \(europa.eu\)](https://eur-lex.europa.eu/curia.jsf?docid=324444)

had transposed and implemented the new Article 6a of the PID at the time of the sweep, even though they were required to start applying it from 28 May 2022<sup>34</sup>.

To help national authorities in their investigations, the Commission has provided them with a **specific AI-based tool in the context of the EU e-Lab** – a project aimed at developing and applying advanced digital technologies to online consumer investigations in support of the CPC network. The tool allows the authorities to monitor the price history of the selected products and to establish whether the prior price stated in the discount announcement is actually the lowest price applied to the product in the 30 days preceding the price reduction announcement.

Several national enforcement authorities have **launched formal enforcement actions in relation to breaches concerning price reductions**. For example, in the autumn of 2023, the Swedish Consumer Agency (*Konsumentverket*)<sup>35</sup> monitored the prices of more than 1 700 products in several different sectors. The review concerned approximately 100 companies, of which the majority marketed products at reduced prices during the review period. It showed that 70% of the examined companies that marketed price reductions infringed the applicable law. Specifically, they: (1) did not indicate the lowest price in the last 30 days, (2) indicated an incorrect prior lowest price, and (3) used a different reference price than the prior lowest price to calculate the size of the price reduction. Other examples include the Polish Office of Competition and Consumer Protection (UOKiK)<sup>36</sup>, the Dutch Authority for Consumers and Markets (ACM)<sup>37</sup> and the Estonian Consumer Protection and Technical Regulatory Authority (TTJA)<sup>38</sup> which have reported on significant infringements by traders and have announced formal investigations. As regards private enforcement, in May 2023 the French consumer association UFC *Que Choisir* published a report<sup>39</sup> on the price comparison practices of 8 major sellers on the French market and filed complaints about unfair commercial practices with the *Procureur de la République de Paris*.

As regards consumer perceptions about the trustworthiness of price reductions, the 2020 and 2022 **Consumer Conditions Surveys** included a question on whether the consumers had experienced price discounts that seemed too large to be genuine when searching or buying online. The share of consumers reporting that they always, most of the time or at least sometimes encountered what seemed to them excessively large price discounts was similar in both surveys – 60% in 2022 and 61% in 2020.

Between January and October 2023, in the context of the supporting study, a limited scale **compliance test** was carried out on 95 websites across 10 Member States, analysing how price reductions and other promotion techniques are presented to consumers<sup>40</sup>. This exercise focused on

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<sup>34</sup> The results of the CPC sweep are available at: [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en).

<sup>35</sup> The review can be found here: [Konsumentverkets granskning 7 a § prisinformationslagen](https://www.konsumentverket.se/pressmeddelanden/2023-10-17-granskning-7-a-%C3%A4-prisinformationslagen).

<sup>36</sup> [https://archiwum.uokik.gov.pl/aktualnosci.php?news\\_id=19718](https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=19718)

<sup>37</sup> <https://www.acm.nl/nl/publicaties/acm-pakt-webwinkels-aan-die-nepkorting-gebruiken>

<sup>38</sup> [https://ttja.ee/uudised/allahindluste-kuvamise-kontroll-e-poodides-pea-40-puhul-tuvastati-rikkumisi?utm\\_campaign=newsletter-04.06.2024&utm\\_medium=email&utm\\_source=sendsmaily](https://ttja.ee/uudised/allahindluste-kuvamise-kontroll-e-poodides-pea-40-puhul-tuvastati-rikkumisi?utm_campaign=newsletter-04.06.2024&utm_medium=email&utm_source=sendsmaily)

<sup>39</sup> <https://www.quechoisir.org/action-ufc-que-choisir-fausses-promotions-l-ufc-que-choisir-depose-plainte-contre-8-sites-de-commerce-en-ligne-n108122/>

<sup>40</sup> The websites were selected based on their popularity ranking on SimilarWeb in the eCommerce and Shopping category.

the presentation of price advantages and did not involve tracking the reference price over the 30-days period to establish the validity of the ‘prior’ price.

Of the 475 products screened, price reductions or other promotions appeared regarding 360 products (on 75 out of 95 websites). The check also showed that *combined offers* were present on 27 websites for 88 products. Finally, general percentage reductions or percentage reductions linked to a *minimum purchase amount* were relatively common (49.5% of the screened websites).

As regards the presentation of price reductions/promotions for specific products (251 products on 42 websites), in around 90% of cases, the **reference price was crossed out** to emphasise the discount. In 75.6% of cases, the **price advantage was presented in percentage**. Often, crossed-out reference price and percentage or absolute value discount were used together to highlight the promotion.

As regards the **nature of the price advantage**, in most cases (69.7%) the researchers did not notice any qualification or explanation of the provided (crossed-out) reference price. This suggests that the seller was offering a price reduction, which means that the reference price provided had to comply with the requirements for the ‘prior price’ under Article 6a PID. The remaining promotions appeared to be **price comparisons**. Most of them used the recommended retail price as reference (25.8%) and the remaining referred to the notion of ‘average price’ (3.1%) and prices on other websites (1.4%).

These results suggest that the price reductions were the prevalent type of price promotion; however, it has to be borne in mind that the specific qualification of the reference price may not have been readily visible and noticeable in all cases. For example, the above-mentioned report of the French consumer association UFC *Que Choisir* from May 2023, which analysed a sample of 6 586 offers with crossed-out reference prices, concluded that only 3.4% of these offers were ‘price reductions’ in the meaning of Article 6a PID. **More than 9 out of 10 of these offers were rather price comparisons**, using many different ways of presenting the reference, like: ‘recommended retail price’, ‘original price’, ‘was price’, ‘average price on the marketplace’, ‘average price on competitor websites’, ‘price provided by third-party seller’, etc.

The consumer survey in the context of the supporting study gathered **consumer perceptions about types of price promotions and their prevalence**. Between 52% and 66% of respondents indicated that they had encountered a price promotion at least ‘sometimes’ in the past 12 months: price reduction when buying more than one item (66%); reduction when buying for more than a certain amount (60%); price reduction (56%); reduced price for members of the ‘loyalty programme’ (53%); comparisons with the recommended price (52%).

In the context of the stakeholder consultation, **EU trade associations and businesses**, while supporting the idea of better consumer information and transparency of price promotions, criticised the divergent implementation of the new rule across the Member States, such as its extension beyond the sale of goods in some Member States and the different application of the regulatory option on perishable goods which is also causing difficulties for cross-border trade. They also request stronger enforcement of the rules for the sake of a level playing field, including as regards

non-EU traders targeting the EU market. In this respect, the industry is calling for strong cooperation among the consumer protection authorities across the EU within the CPC network<sup>41</sup>.

For many business stakeholders it is important to maintain the **current flexibility regarding price comparisons**. Price comparisons are especially important for franchise networks where the franchisor announces price promotions based on its recommended selling price, and in the fashion ‘outlet’ sector. Business stakeholders consider that the current case-by-case assessment approach to price comparisons under the UCPD should be maintained, including as regards the use of the recommended retail price as reference and of the marketing techniques of percentage reductions, absolute value reductions and crossed-out reference prices. In their view, traders using price comparisons can ensure the necessary transparency by appropriately informing consumers; possible problems can be addressed by extending the UCPD guidance on price comparisons to specify the criteria for fair comparisons (ensuring that the reference price is real, effective and representative). Many business stakeholders would oppose any further formal rules on price comparisons, at the same time calling for the avoidance of any different approaches by national authorities in different Member States towards price comparisons when enforcing the general UCPD rules in individual cases under the case-by-case approach.

In conclusion, the implementation of the new PID rule has given rise to **important questions about its interpretation, especially given the vast range of different price promotion techniques employed by sellers**. Some of them have been clarified in this report (in addition to the guidance already provided in the 2021 Commission Notice), while the important issue concerning the interplay between the regulated ‘prior’ price and other reference prices in price reductions is the subject matter of a forthcoming CJEU ruling in Case C-330/23, *Aldi Süd*.

The implementation of Article 6a PID shows **certain divergences across Member States** as regards its scope of application and the categories of goods subject to regulatory options. In particular, the different implementation of the regulatory choice for ‘perishable goods’ gives rise to concerns around the possible lack of a level playing field and legal certainty for consumers and traders. Alternative regulatory solution should be explored for addressing these categories of goods in a more harmonised manner across the Member States.

Several Member States have not only issued formal guidance to their traders, complementing the Commission’s Notice, but also carried out market monitoring and embarked on formal enforcement, including by co-operating within the CPC framework and using the digital tools that it provides. Continued strong enforcement will continue to play an essential role in implementing Article 6a PID. Many traders’ representatives also call for more uniform implementation and stronger enforcement of the rules to guarantee a level playing field.

Many consumer representatives and Member States highlight the need **to address the risk of consumer confusion** between ‘regulated’ price reductions and other forms of price advantages that are only subject to the case-by-case assessment under the UCPD. These alternative forms

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<sup>41</sup> See for example, Ecommerce Europe, EuroCommerce and Independent Retail Europe ‘Recommendations to improve the interpretation of and compliance with Article 6a of the 2019 Price Indication Directive’, 29 February 2024, available at: <https://www.eurocommerce.eu/2024/02/recommendations-to-improve-the-interpretation-of-and-compliance-with-article-6a-of-the-2019-price-indication-directive/>.



appear to be more widely used since the entry into application of the PID rules on price reductions, in particular price comparisons using the recommended retail price as reference. By contrast, traders' representatives call for addressing price comparisons with additional guidance on their principles in the context of the UCPD. In their view, the flexible choice of the techniques for price comparisons should be retained with a case-by-case application of the UCPD. Further research is needed to assess whether the current business practices regarding the marketing of price comparisons cause confusion and mislead consumers as to the real nature of the price promotion and the advantage that it entails.

## 8. 'Dual quality' marketing

'Dual quality' is the commonly used term referring to traders' practices of **marketing goods in different Member States as identical**, despite them having significantly different composition or characteristics. These differences are not related to the 'quality' of the goods as such but to the differences in the goods' composition or characteristics. Therefore, although commonly used, the term 'dual quality' does not necessarily mean lower quality of goods. Recognising the importance of the 'dual quality' issue, raised in the European Council<sup>42</sup>, in the European Parliament<sup>43</sup>, and by certain Member States and stakeholders, the Commission proposed strengthening consumer protection for these cases through a specific amendment of the UCPD.

The new Article 6(2)(c) UCPD specifically empowers the competent authorities to stop and prohibit 'dual quality' practices, subject to a case-by-case-assessment. Based on the Commission's assessment of the transposition measures, Member States have on the whole implemented the 'dual quality' provision correctly in their national law. A possible transposition problem is being discussed with only one Member State.

Article 6 UCPD aims at **ensuring transparency**, so that consumers are not misled by products presented as being identical across the EU when they are not. It **applies when such marketing practice could lead consumers to take transactional decisions they would not have taken if they had known about the difference in the good's composition and characteristics**. The EU consumer protection legislation does not deal with product composition and recipes. Therefore, this amendment to the UCPD does not specifically aim at or require the harmonisation of product recipes across the EU.

The Commission has clarified the application of Article 6(2)(c) UCPD in a dedicated section of the UCPD Guidance at the end of 2021. The Guidance explains that, in line with the broad general scope of the UCPD, '**marketing**' covers both the presentation of goods on their packaging, the related advertising and the selling of the goods to consumers. The provision applies to all traders involved with the supply of the goods to consumers, **although the main target group is clearly**

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<sup>42</sup> See Conclusions by the President of the European Council in March 2017, available here: <https://www.consilium.europa.eu/media/24113/09-conclusions-pec.pdf> and, more recently, Conclusions of the April 2024 European Council available here: <https://www.consilium.europa.eu/media/m5jlwe0p/euco-conclusions-20240417-18-en.pdf>.

<sup>43</sup> See questions by Members of the European Parliament addressed to the Commission available at: <https://www.europarl.europa.eu/plenary/en/parliamentary-questions.html#sidesForm>.

**the manufacturers** that decide on the composition, the design and presentation of the goods marketed in different Member States.

The UCPD Guidance also explains important concepts, such as **‘being identical’ and the ‘significance’ of the difference** in composition or characteristics. In particular, it explains that ‘significance’ relates to the perception of an average consumer and is therefore part of the general case-by-case assessment of the impact of the marketing on the transactional decision of the average consumer to choose between goods. The Guidance also explains that the exception for **differences justified by ‘legitimate and objective factors’** such as geographical or seasonal availability of raw materials or traders’ voluntary nutritional reformulation policies which cannot technically or economically be done simultaneously in all markets<sup>44</sup> must be interpreted narrowly. Moreover, if traders maintain that the differences in goods marketed as being identical are justified by legitimate and objective factors, they should inform consumers of these by other means, for instance in related advertising, information at the retailer premises or through easily accessible online means.

The Commission has been actively monitoring the issue of ‘dual quality’ across Member States and will continue to do so. It has also conducted several studies on the matter through its Joint Research Centre.

In July 2023, the Commission published the results of a **second study on the EU-wide comparison of the characteristics and presentation of branded food products**<sup>45</sup>. This study covered 26 Member States<sup>46</sup> (compared to 19 Member States covered by a first study published in 2019<sup>47</sup>). It concluded that 6% of the food products covered by the study had a different composition but an identical front-of-pack appearance, while 23% of the products differed in composition and indicated to a certain extent the differences by variations in the design on the front-of-pack<sup>48</sup>.

Compared to the first 2019 study, this **represented a 7-percentage point decrease**<sup>49</sup> **of goods with an identical or similar front-of-pack appearance but different composition or characteristics**. The result is encouraging, especially since the sample collection for the analysis took place before the entry into application of the new UCPD provision. As in the first 2019 study, in 2023 the Commission did not find evidence of any consistent geographical pattern in the goods’ composition and characteristics. Nevertheless, this latest study also showed that there are still cases of products with different composition which are marketed as being identical. The Commission

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<sup>44</sup> In this respect, the Farm to Fork Strategy recommends reformulating food products in line with guidelines for healthy, sustainable diets. Such voluntary strategies to reduce, for example, added sugars, saturated fats and salt, can include a gradual roll-out of recipe changes for organisational reasons and to ensure consumer acceptance.

<sup>45</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC131303>.

<sup>46</sup> The data was collected in 2021 in all Member States except Malta where the sampling of the goods could not take place due to Covid-19 related travelling restrictions.

<sup>47</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC117088>.

<sup>48</sup> A significant portion of the products that were included in the 2018/2019 testing campaign (and also in the 2021 testing campaign) were products for which national consumer protection authorities or consumer associations had received complaints regarding differences between domestic versions and versions available in other Member States. For this reason, the share of ‘dual quality’ products is not representative; it could be an overestimation of the overall share of ‘dual quality’ food products in the EU single market.

<sup>49</sup> For the two categories combined (differences in composition of products with similar and the same presentation) in the same 19 Member States where the 2019 study was conducted (as opposed to the 26 Member States in 2023 study), there is a 7-percentage point decrease from 31% in 2019 study to 24% in 2023 study.

will continue monitoring the matter and the impact of the application of the new UCPD provision in the Member States.

Also in 2023, the Commission published a number of other important analytical documents.

First, the study on food products incorporated a **survey of the manufacturers of the products in question**<sup>50</sup>. A majority (60%) of the companies that were found to market ‘dual quality’ goods indicated having taken actions or to be planning to act, including by changing product presentation (i.e. front-of-pack appearance), harmonising recipes, implementing other measures (e.g. informing consumers) or combining these actions. EU consumer legislation was the reason most frequently mentioned by companies for acting (47% of respondents that provided an answer). Reasons such as change in business strategy (20%), intervention by national public authorities (7%) and negative publicity (7%) were also given as reasons for addressing the matter. The companies that did not plan to take any action (40% of respondents) reported that the lack of action was due to differences in national regulations (80%). Some pointed to production-related factors (40%) such as those linked to the availability of raw materials across the EU or due to the technical equipment used in factories. Consumer preferences, such as specific taste profiles (30%), or differences in voluntary standards across Member States (20%) were also mentioned. Finally, ‘other reasons’ included different rounding rules for indicating the percentage of ingredients or products compared not being from the same production period.

Second, an empirical testing of **consumers’ perceptions of differences in package and product versions** of seemingly identical branded food products was completed<sup>51</sup>. The study found that the front-of-pack design elements have an impact on the perception of package and product differences and on consumer choices and that, given the complexity of the design elements, a case-by-case assessment of their actual impact on consumer’s perception and choices would be needed.

Finally, the Commission also published a **study on the personal and household care sector** after adapting the existing methodology used previously for food products<sup>52</sup>. It found that 8% of the products differed in composition but without differentiating the appearance of the front-of-pack in at least one of the 20 surveyed Member States. 25% of the products differed in composition and indicated to a certain extent those differences by variations in the graphic design on the front-of-pack. The brand owners submitted that the reasons for such differences were that product launches had come at different times in the reformulation cycles of products. Again, there was no indication of consistent differentiation of products related to certain geographical regions of the participating Member States.

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<sup>50</sup> The food manufacturers include producers of a broad range of goods such as confectionery, cereals, soups, ready to eat savouries and snacks, meat, dairy products, fish, sugars, non-alcoholic beverages. See in particular, Annex 5 of the EU-wide comparison of the characteristics and presentation of branded food products (2021) Annex 5 – Company survey results available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC131303>.

<sup>51</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC130388>.

<sup>52</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC134346>. The study was conducted in 15 Member States that expressed interest in participating and in a further 5 Member States where the JRC itself collected the data.

The preliminary results of these different studies were presented during a stakeholders' event in October 2022<sup>53</sup> and the final results before the European Parliament's IMCO Committee in September 2023.

An earlier Commission study in 2020<sup>54</sup> found that informing consumers about the differentiation of food products in various Member States by including a 'made for' claim had **different impacts on consumers' purchase decisions**, i.e. in some cases it led to the 'domestic' versions being chosen, while in others the 'foreign' versions were chosen. **The consumer's behaviour, when confronted with differentiation of goods, would also depend on the scale of the difference.** The average consumers' transactional decision was more likely to be affected if they knew that one or a number of key ingredient(s) or their content differed substantially<sup>55</sup>. In addition, larger compositional differences are more likely to lead to different sensory characteristics, making the difference more obvious.

In April 2023, to support the national authorities in their activities regarding 'dual quality', the Commission organised, together with the Romanian Consumer Protection Authority, a **dedicated workshop in the framework of the CPC**. The workshop provided for useful exchanges between the Member States representatives and industry. While the national authorities overall considered the matter as important, they also pointed out giving it different levels of priority, since 'dual quality' marketing does not affect consumers in the same way in all Member States. A majority of Member States authorities stressed the importance of case-by-case assessment and pointed out that, at the moment, the 'dual quality' problem is of lesser concern than before the adoption of the Modernisation Directive, also due to the constructive informal dialogues with the manufacturers in the context of the implementation of the new UCPD rule.

This report has been informed by a range of stakeholder contacts focused on 'dual quality'. Interviews with national Ministries focusing on the application of the Modernisation Directive covered all Member States. In addition, through the wider interview programme for the Fitness Check, feedback on 'dual quality' was gathered from stakeholders concerned including EU trader associations. Some national ministries reported that they viewed the issue of 'dual quality' as having already been addressed through the Modernisation Directive. Others saw it as having become an issue of comparatively low importance compared with other problematic practices. However, there were also Member States that signalled continued concerns about 'dual quality'.

According to interview and written feedback received from national Ministries, only **two Member States have conducted formal investigations into dual quality cases**. The Czech authorities have pursued a 'dual quality' case concerning the manufacturer of a food product that exhibited

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<sup>53</sup> The participants included industry associations, food/drink companies, national consumer protection authorities and BEUC.

<sup>54</sup> JRC report 'Economic analyses of differences in composition of seemingly identical branded food products in the Single Market' (2020), available at: <https://op.europa.eu/en/publication-detail/-/publication/19769287-a153-11ea-9d2d-01aa75ed71a1/language-en/format-PDF/source-242563517>. The report analysed, via lab and online experiments, whether informing consumers about the product differences (expressed with 'made for country X' designation) affects their choice of a product version. There was no clear preference for 'domestic' or non-domestic versions in the online experiment, whereas there was more preference for domestic versions in the lab experiment.

<sup>55</sup> JRC report 'Differences in composition of seemingly identical branded products: Impact on consumer purchase decisions and welfare' (2020), available at: <https://op.europa.eu/en/publication-detail/-/publication/98ecec80-a154-11ea-9d2d-01aa75ed71a1/language-en>.

differences in composition compared to equivalent products marketed in other Member States. The Romanian authorities investigated a case concerning a soft drinks company on the grounds that their identically branded goods had different composition in different Member States. The conclusions of these investigations have not been publicly announced by the authorities concerned.

In addition, Slovakia conducted market research in 2024 and found instances of goods presenting differences in composition, especially in the case of soft drinks, products of animal origin and seasonings. Slovakia presented these findings at the AGRIFISH Council on 27 May 2024 calling on the Commission to continue paying due attention to this problem and on all Member States to enforce the relevant EU legislation<sup>56</sup>.

The stakeholder survey also included specific questions on the **perceived consumer detriment** due to ‘dual quality’ practices, the **necessary actions to address it** and the **types of potential legislative action**.

With respect to **consumer detriment**<sup>57</sup>, 26 respondents considered that consumers suffer detriment due to ‘dual quality’ practices to a great or moderate extent. Among 26 respondents, 9 Ministries and enforcement authorities from 6 Member States, and 7 consumer associations (national associations from 6 Member States and one EU level association) responded that there was consumer detriment. No business association expressed such a view.

With respect to the **necessary measures to tackle ‘dual quality’ practices** by traders<sup>58</sup>, among the Member States authorities (Ministries and enforcement authorities), representatives of 3 Member States replied that the current UCPD rules, based on a case-by-case assessment and considering the impact on consumers are adequate and should be enforced while the representatives of the other 3 Member States responded that stronger rules are needed. Amongst **consumer associations**, one felt that the rules are adequate but should be better enforced whereas the associations representing 5 Member States felt that stronger rules were needed. The single responding EU-level association did not provide a reply to this question.

Finally, the respondents who indicated the need for ‘stronger rules’ were asked to indicate **the options for strengthening the legal framework**<sup>59</sup>. The respondents could indicate more than one of the pre-formulated options and propose their alternative ones.

Among the four respondents representing **national ministries and enforcement authorities** (representing in total three Member States), three (representing two Member States) were in favour of banning such marketing practices in all circumstances and in all the Member States affected, irrespective of their impact on individual consumers in individual countries. All four respondents from the three Member States (also) supported the other two options: restricting/specifying the scope of ‘legitimate and objective’ factors that could justify such marketing practices, and adopting

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<sup>56</sup> Recording available at: <https://video.consilium.europa.eu/event/en/27486>.

<sup>57</sup> Question 24 of the stakeholder survey: ‘Do you consider that consumers suffer detriment due to traders’ practices of marketing goods (through their branding and presentation) as being identical to those goods in other EU countries notwithstanding their differences in composition and characteristics (‘dual quality’)?’.

<sup>58</sup> Question 26 of the stakeholder survey: ‘What is your opinion regarding measures to tackle ‘dual quality’ practices by traders?’.

<sup>59</sup> Question 27 of the stakeholder survey: ‘In your opinion, which of the following rules would strengthen the legal framework on ‘dual quality’ practices?’.

additional rules about informing consumers when national product versions are differentiated due to ‘legitimate and objective’ factors.

Out of the five **consumer associations** (representing 5 Member States), one was in favour of banning ‘dual quality’ marketing practices in all circumstances. Three favoured the other options – restricting/specifying the scope of ‘legitimate and objective’ factors and the introduction of additional rules to inform consumers. Another one showed openness for all options.

In conclusion, the enforcement experience and the surveys conducted for the purpose of this report show **different perceptions of the importance of problems related to ‘dual quality’**. For certain Member States, the matter remains of concern. With respect to the relevant amendment introduced by the Modernisation Directive, Member States seem broadly content with the possibilities now available under the UCPD **to act on ‘dual quality’ marketing practices where warranted to protect their consumers**, i.e. on a case-by-case basis. Several national authorities appreciated their informal co-operation with the industry in solving the problems identified.

The Commission’s latest EU-wide survey of food products demonstrates that the industry has been taking measures towards either changing the presentation of the different national versions, to avoid misleading consumers, or harmonising their recipes and composition across the Member States.

In the light of the above, and with the new legislation in force for only two years so far, it appears necessary to **focus on the implementation and enforcement of the new rules**.

Taking into account the European Council conclusions of 17-18 April 2024, the Commission will continue to assist Member States’ efforts to address ‘dual quality’ cases of concern, supporting co-operation through the CPC network, promoting effective implementation and enforcement of the new legislation, and continuing monitoring the situation in the markets.

## 9. Unsolicited doorstep selling, commercial excursions and sales events

The Modernisation Directive added to the UCPD (Article 3(5)) a regulatory choice allowing the Member States to adopt proportionate and non-discriminatory rules to protect the legitimate interests of consumers with regard to aggressive or misleading marketing or selling practices in the context of unsolicited visits to a consumer’s home (**‘unsolicited doorstep selling’**)<sup>60</sup> or excursions organised by a trader with the aim or effect of promoting or selling products to consumers (**‘commercial excursions’**), where such rules are justified on grounds of consumer protection.

Recital 55 of the Modernisation Directive explains that such national provisions **should not prohibit those sales channels as such**. It also gives examples of the possible national provisions, for example, prohibiting unsolicited visits if the consumer has visibly indicated that such visits are not acceptable or defining the time of day when such visits are not allowed. It is to be noted that these new regulatory choices do not affect Member States measures based on grounds other than

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<sup>60</sup> In interviews conducted by the contractor during the supporting study with the direct selling associations at EU level, SELDIA and Direct Selling Europe (DSE) noted that unsolicited visits represent a low proportion of total doorstep selling activity, which is mainly driven by visits where people have agreed to be visited in advance.

consumer protection that fall outside the harmonised scope of the UCPD (for example, see Recital 7 of the UCPD concerning measures based on taste and decency).

In addition, the CRD was amended allowing the Member States to adopt national provisions providing for more favourable rules concerning the **consumer's right of withdrawal**. Thus, Member States can extend the right of withdrawal in the case of unsolicited visits or commercial excursions from 14 days to 30 days (Article 9(1a) CRD), and they can derogate from four of the specific exceptions from the right of withdrawal (the first paragraph, points (a), (b), (c) and (e) of Article 16 CRD)<sup>61</sup>.

These regulatory choices do not apply to another category of off-premises selling – **sales events (product demonstrations) organised at places other than trader's business premises**, such as private homes, cafés or restaurants. These selling techniques remain subject to the general rules of the UCPD and the CRD. The review clause of the Modernisation Directive specifically requires the Commission to assess whether the current rules provide an adequate level of consumer protection in the context of such selling events.

Several Member States<sup>62</sup> have used the **regulatory options to regulate specific aspects of unsolicited visits and/or commercial excursions under the UCPD** (Austria, Belgium, Croatia, Czechia, France, Germany, Slovakia and Spain). For example, Croatian law provides that unsolicited visits to the consumer's home may take place on working days between 8.00 and 20.00. In Germany, when a contract is concluded in the context of an unsolicited visit to a consumer's home, it is prohibited to require the consumer to pay for the good or service before the end of the day on which the contract was concluded (this does not apply if the payment is less than EUR 50). France prohibits unsolicited visits by a trader to a consumer's home for the purpose of selling goods or providing services where the consumer has clearly and unambiguously indicated that they do not wish to be the subject of such visits.

Several Member States use the **CRD regulatory choices regarding the right of withdrawal**. For example, Cyprus, Greece, Italy, Malta, Poland, Romania and Slovakia use both options, i.e. they extended right of withdrawal period to 30-days and waived the application of all or some of the exceptions from the right of withdrawal. In addition, Czechia, Ireland, Portugal, and Spain have only used the option to extend the right of withdrawal period to 30 days, while Austria, Croatia and Finland have waived the application of all or some of the four exceptions from the right of withdrawal.

Stakeholders representing the **direct selling sector** (encompassing doorstep sales and sales at events) have not communicated to the Commission specific concerns related to the use by Member States of these regulatory options. There are also no indications of appreciable impact on cross-

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<sup>61</sup> Namely, the exemption from the right of withdrawal for service contracts after the service has been fully performed (point (a)), the supply of goods or services for which the price is dependent on fluctuations in the financial market (point (b)), the supply of goods made to the consumer's specifications or clearly personalised (point (c)), and the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery (point (e)).

<sup>62</sup> Further information about the Member States using the regulatory options under the UCPD and CRD and the relevant national provisions is available in the notifications of the Member States published by the Commission at: [https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd\\_en](https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd_en) and [https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive/regulatory-choices-under-unfair-commercial-practices-directive-200529ec\\_en](https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive/regulatory-choices-under-unfair-commercial-practices-directive-200529ec_en).

border trade. According to the industry representatives, doorstep selling is not characterised by a strong cross-border dimension. Furthermore, many direct sellers are shifting to online sales methods while keeping the feature of personal interaction with their customers.

According to the 2023 Ipsos survey of direct sellers<sup>63</sup>, the most common methods for selling to existing customers are personal networks (54%), home parties/product demos (39%) and social media (39%); while the most common methods for selling to potential new customers are referrals/word of mouth (64%), personal networks (51%) and home parties/ product demos (43%).

**Organised sales events (i.e. product demonstration at a private home, hotel or restaurant involving sale of the product)** are subject to the general provisions of the UCPD. Aggressive and misleading practices in the context of such sales events can be sanctioned by national authorities based on a case-by-case assessment under Articles 5 to 9 of the UCPD. In addition, Annex I to the UCPD prohibits practices where the trader creates the impression that the trader is not acting for purposes relating to the trader's profession, and practices that create the impression that the consumer cannot leave the premises until a contract is formed. Furthermore, the UCPD is without prejudice to authorisation regimes and national measures taken for purposes other than consumer protection (such as cultural reasons, decency, etc.) and which are therefore outside the scope of the UCPD.

The supporting study for this report did not identify any national case or enforcement action specifically on **sales events**.

In the consumer survey in the context of the supporting study, **only a minority of consumers** reported having experienced, in the last 12 months, a **product demonstration at a private home, hotel or restaurant** involving sale of the product – 16 % (ranging from 28% in Romania to 11% in Portugal)<sup>64</sup>. The same share of respondents (16%) reported having experienced an **unsolicited doorstep selling visit** (ranging from 23% in Sweden and France to 6% in Hungary). An even smaller number had experienced **commercial excursions**: 11% (ranging from 14% in France to 8% in Portugal and Hungary).

However, amongst those who had experienced these selling techniques, the majority (67% in cases of doorstep selling and sales events and 70% in cases of commercial excursions) indicated that **they felt pressured to purchase**<sup>65</sup>. The highest share of consumers who felt pressured during **unsolicited visits** was in Estonia (81%) and the lowest in France (50%). As regards **commercial excursions**, the highest share of consumers who felt pressured was in Poland (78%), and the lowest in Italy (63%). In the case of **product demonstrations** at a private home, hotel or restaurant, the highest share of consumers who felt pressured was in Portugal (79%) and the lowest in France (59%).

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<sup>63</sup> Online survey conducted by Ipsos between 27 March and 21 April 2023 in 12 EU Member States (Czechia, Estonia, France, Germany, Italy, the Netherlands, Latvia, Lithuania, Poland, Slovakia, Spain and Sweden), available at <https://directsellingeurope.eu/sites/default/files/2023-07/Ipsos%20Survey%202023%20-%20Full%20Visual.pdf>.

<sup>64</sup> Question 15 of the consumer survey: 'In the past 12 months, have you experience any of the following selling practices?'

<sup>65</sup> Question 15.1 of the consumer survey: 'Have you felt pressured to buy the product or service in these situations due to those selling practices?'



The stakeholder survey included questions on **perceived consumer detriment** due to potential unfair practices such as pressure selling, misleading information used in the context of these sales techniques and the necessary measures<sup>66</sup>.

As regards **doorstep selling**, there were 128 individual responses of which 87 expressed an opinion while 41 replied ‘don’t know’. Among the total of 23 respondents from the **national ministries and enforcement authorities** (representing 17 Member States), 17 respondents (representing 12 Member States) viewed doorstep selling as causing consumer detriment to a ‘great extent’ or to a ‘moderate extent’. Among the total of 13 respondents from consumer associations (national associations from 8 Member States and 2 EU level associations), 12 respondents considered that doorstep selling causes great or moderate levels of consumer detriment. Among the respondents from **business associations** (28), none considered that doorstep selling causes great or moderate levels of consumer detriment.

As regards **commercial excursions**, 76 respondents expressed an opinion while 52 replied ‘don’t know’). Among the total 25 respondents from **national ministries and enforcement authorities** (representing 16 Member States), 12 respondents (representing 10 Member States) viewed commercial excursions as causing consumer detriment to a ‘great extent’ or to a ‘moderate extent’. Among the total of 13 respondents from consumer associations (national associations from 8 Member States and 2 EU level associations), 11 respondents considered that doorstep selling causes great or moderate levels of consumer detriment. Among the respondents from 27 **business associations** none considered that doorstep selling causes great or moderate levels of consumer detriment.

Finally, as regards organised **selling events**, among the total of 127 respondents, 78 expressed an opinion while 49 replied ‘don’t know’. Among the total 19 respondents from the **national ministries and enforcement authorities** (representing 13 Member States), 14 respondents (representing 11 Member States) viewed sales events as causing consumer detriment to a ‘great extent’ or to a ‘moderate extent’. Among the total of 14 respondents from consumer associations (national associations from 8 Member States and 3 EU level associations), 11 considered that sales events cause detriment to a ‘great extent’ or to a ‘moderate extent’. Among the 27 respondents from **business associations**, none replied that these events cause great or moderate detriment.

The **respondents** that considered that these selling techniques cause **great or moderate** detriment were asked for their views on **which measures could be taken to better protect consumers**<sup>67</sup>. There were 40 such responses for doorstep selling, 31 for commercial excursions and 34 for organised selling events.

As regards **doorstep selling**, among the 16 respondents from **national ministries and enforcement authorities** (representing 10 Member States), 8 respondents (representing 6 Member States) supported **better enforcement** of the existing rules, 2 respondents (representing one and the same Member State) supported **stronger customised national rules** and 4 respondents (representing 3 Member States) supported **stronger EU-wide rules**.

As regards **commercial excursions**, among the 16 respondents from **national ministries and enforcement authorities** (representing 10 Member States), 7 respondents (representing 3 Member

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<sup>66</sup> Question 22 of the stakeholder survey: ‘Do you consider that consumers suffer detriment due to the unfair commercial practices (i.e., pressure selling, misleading information) in the context of the following selling techniques taking place outside the seller’s regular business premises?’.

<sup>67</sup> Question 23 of the stakeholder survey: ‘What measures are needed to protect consumers better in such cases?’.

States) supported **better enforcement** of the existing rules, 1 respondent supported **stronger customised national rules** and 2 respondents (representing 2 Member States) supported **stronger EU-wide rules**.

As regards organised **selling events**, among the 16 respondents from **national ministries and enforcement authorities** (representing 10 Member States), 4 respondents (representing 4 Member States) supported **better enforcement** of existing rules, 2 respondents (representing 2 Member States) supported **stronger customised national rules** and 4 respondents (representing 4 Member States) supported **stronger EU-wide rules**.

At the national level, the Netherlands Authority for Consumers and Markets (ACM)<sup>68</sup> carried out a consumer study in 2022. It concluded that primarily energy contracts were marketed using doorstep selling, but also lottery tickets, telephone and broadband plans, and donations to charities. The study noted that many consumers experience pressure to conclude contracts in the doorstep selling context.

In conclusion, based on the data collected for 10 Member States, only a relative minority of consumers are exposed to the three selling techniques in question. However, among these consumers who have experienced them in practice, a large percentage report having experienced pressure selling that raises concerns regarding the fairness of commercial practices employed by the respective sellers. Several Member States have implemented the new regulatory options under the UCPD and CRD to impose specific additional rules and restrictions and/or to strengthen the consumer's right of withdrawal in doorstep selling and commercial excursions. It is too early to draw conclusions on the impact of these measures.

As regards **sales events** (product demonstrations), the research for this report did not reveal a strong call by Member States or stakeholders for regulatory action. The situation of the sales events also did not appear as a major issue in the position papers received (either in the public<sup>69</sup> or targeted consultations). The UCPD enables the Member States to curb the unfair practices in the context of sales events by applying the general provisions against misleading and aggressive practices as well as the specific relevant prohibitions in the blacklist.

## 10. Transparency in online searches

The Modernisation Directive added to the UCPD (Article 7(4a)) the requirement **to inform consumers about the main parameters determining the ranking of online search results in the B2C environment**. This complemented the parallel obligation introduced by the Platform-to-Business Regulation<sup>70</sup> in the B2B environment. Under the UCPD, those requirements apply to online marketplaces and comparison tools that allow consumers to search for products offered by third parties (i.e. by other traders, but also by consumers offering goods and services on platforms intermediating consumer-to-consumer (C2C) sales). A similar requirement is also included in the

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<sup>68</sup> Available at: <https://www.acm.nl/en/publications/acm-study-reveals-doorstep-selling-major-nuisance-consumers>.

<sup>69</sup> Public consultation on 'Digital fairness - fitness check on EU consumer law', available at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13413-Digital-fairness-fitness-check-on-EU-consumer-law/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13413-Digital-fairness-fitness-check-on-EU-consumer-law/public-consultation_en).

<sup>70</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57). Among other requirements, the Platform-to-Business Regulation sets out transparency requirements for online platforms and search engines regarding the ranking criteria in their relations with business users.

CRD (Article 6a) that applies only to online marketplaces. Moreover, a specific prohibition of undisclosed advertising and promotion of products in search results was added to Annex I of the UCPD (point 11a).

Furthermore, in case of recommender systems, the DSA requires more transparency in the terms and conditions about the main parameters used, as well as information and functionalities regarding options for consumers to modify or influence those parameters. The DSA also introduces an obligation for online platforms to provide a clear and specific statement of reasons to any affected recipients of the service for any restrictions of the visibility of specific items of information provided by the recipient of the service, including removal of content, disabling access to content, or demoting content. In the case of very large online platforms (VLOPs) and very large online search engines (VLOSEs), the DSA requires the availability of at least one non-personalised recommender system option.

As regards **consumer perceptions about the transparency of online ranking**, the percentage of consumers indicating that they could not understand the ranking method of search results at least ‘sometimes’ was 52% in CCS 2023 (compared to 54% in CCS 2021). In the consumer survey for the supporting study, for 21% of the consumers when looking at search results (‘often’ or ‘most of the time’) it was not easy to find information about the parameters used for ranking those search results, while an additional 27% of the consumers reported that they ‘sometimes’ found it challenging to access this information. As regards paid advertising or placement in search results, the 2023 CCS found that 75% of consumers perceived hidden ads placed in search results at least ‘sometimes’ (compared to 78% in the 2021 CCS).

**A compliance test** was performed in the context of the supporting study to assess the **information to consumers** about ranking parameters for search results and the **transparency of paid advertisements/placements** on 85 websites and apps in 10 Member States.

The results show that it is only on 35% of websites (30 out of 85 websites) that consumers were informed about the **parameters influencing the default search result rankings**. When information on the ranking of the results was presented, it was generally clear but limited to explanation of the general principles (i.e. that ranking is based on product searches, product popularity or remuneration received from partners). These results are broadly in line with the results of the earlier study on compliance by online platforms with the ranking transparency requirements in their relations with business users which was prepared for the 2023 Report of the Commission on the Platform-to-Business Regulation. The study found that only a third of all the terms and conditions of the online platforms under review contained information on the main ranking parameters, and even in those cases the descriptions were provided in rather general terms<sup>71</sup>.

The search results included top results indicated as **paid placements (advertisements)** in one fifth of cases (19.7% of the searches, on 15 out of 85 websites). In the majority of these results the paid advertisement or placement was marked with the label ‘sponsored’ (37.7%) or ‘advertisement’ (33.3%). Other methods of identification included an icon or a link to click, which either brings the user to a different page providing information, or text stating that the result was sponsored appearing when hovering the mouse on top of the icon (26.1% of cases).

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<sup>71</sup> Report from the Commission on the first preliminary review on the implementation of Regulation (EU) 2019/1150, COM (2023) 525.

As concerns EU-level enforcement on the labelling of paid advertisements, following the CPC coordinated action in 2022, TikTok committed to identifying paid advertisements in videos with a new label to be tested for effectiveness<sup>72</sup>.

In conclusion, the data gathered through the consumer survey and the compliance test on a selection of websites, as well as the Consumer Conditions Scoreboards, show that transparency about the search results ranking parameters requires improvement. Furthermore, the providers of online search functionalities that include advertisements or paid placements in search results have to ensure that they are clearly visible for consumers and easily distinguishable from the other results.

## 11. Consumer reviews

The Modernisation Directive included a specific transparency requirement in the UCPD (Article 7(6)) – traders that give access to reviews must **inform consumers about whether and how they ensure that the published reviews originate from consumers who have actually used or purchased the product**. Furthermore, it added specific prohibitions on misleading practices to Annex I (points 23b and 23c). In these provisions ‘reviews’ should be interpreted broadly as covering not only textual messages but also, for example, ‘star ratings’ and similar tools whereby consumers express their views on a product or a trader’s performance.

A major challenge in the area of reviews concerns **the measures that traders** that give access to consumer reviews, in particular the online intermediaries (e.g. online marketplaces and dedicated review platforms), **have to take** to comply with the new point 23b of Annex I that prohibits stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers. Under this provision, **the traders that choose to present reviews that they make available as consumer reviews, must take measures** which – without amounting to a general obligation to monitor or carry out fact-finding (see Article 8 of the DSA) – increase the likelihood for such reviews to reflect real users’ experiences. On the one hand, this requirement entails minimum obligations that all traders giving access to consumer reviews must meet, for example only allowing reviews by users who have bought the product in question or requiring the user to provide proof that they have used the product in other cases where the trader giving access to the reviews does not control the underlying transactions. On the other hand, the ‘proportionate and reasonable’ element of this requirement implies the obligation for these traders to take **additional measures to prevent and remove fake reviews that are commensurate with their business model and the identified risks** (for example, when being the target of fake review ‘broker’ activity – see below). Such measures can include, for example, deploying digital and artificial intelligence tools to analyse the reviews and stop the fake ones.

As far as online intermediaries are concerned, fake reviews constitute illegal content and are subject to the requirements of the DSA regarding the removal of illegal content. Furthermore, online intermediaries are exempted from liability, under certain conditions, as regards the illegality or potential claims for damages regarding those reviews.

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<sup>72</sup> For more information: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_3823](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3823).

Problems with **the authenticity** of consumer reviews were reported, for example in the **sweep on consumer reviews**<sup>73</sup> that the CPC authorities carried out in 2021 (i.e. before the Modernisation Directive's entry into application): almost two thirds of the online shops, marketplaces, booking websites, search engines and comparison service sites analysed triggered doubts about the reliability of the reviews.

According to the 2023 CCS, 69% of **consumers had seen consumer reviews** that did not seem genuine at least 'sometimes' (compared to 67% in 2021 CCS). As regards the transparency obligation for traders that give consumers access to reviews, in the consumer survey for the supporting study, 56% of consumers reported that at least 'sometimes' they could not find information on how reviews are collected and whether the company ensures that published reviews are from real customers.

The supporting study also included analysis of the **compliance by the traders** with the new information requirement under the UCPD. Out of 85 e-commerce and travel websites in 10 Member States screened, consumer reviews were present on 52 websites. Only half of those 52 websites provided information on the use and processing of reviews. When made available, that information was presented in the terms and conditions of the website<sup>74</sup>.

**Several organisations have investigated consumer reviews at the national level.** In 2023, the Swedish Consumer Agency conducted a sweep<sup>75</sup> regarding consumer reviews in the field of insurance, covering 20 companies that published consumer reviews. It concluded that almost all the companies included in the sweep did not indicate together with the reviews whether the reviews came from consumers that had actually used or bought the products. According to a study by the Federation of German Consumer Organisations (*Verbraucherzentrale Bundesverband – Vzbv*) in 2023, the majority of the 30 providers analysed did not meet or met inadequately the information requirements for online reviews<sup>76</sup>. The latter study also pointed to concerns relating to practices of website operators that incorporate reviews from external assessment portals on their pages sometimes without providing information to consumers regarding verification of the origin of those external reviews.

**As regards enforcement, at EU level** the national authorities finalised in 2023 a CPC coordinated action concerning several Google services (Google Store, Google Play Store, Google ads and search, Google flights and Google Hotels), which covered, among other issues, practices relating to consumer reviews on Google Hotels. Google agreed to make changes clarifying that they do not verify reviews on Google Hotels<sup>77</sup>.

**Several consumer enforcement authorities** have acted on consumer reviews in recent years. For example, in 2022 the Netherlands Authority for Consumers and Markets (ACM) imposed a fine

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<sup>73</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps\\_en#ref-2021--sweep-on-online-consumer-reviews](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en#ref-2021--sweep-on-online-consumer-reviews)

<sup>74</sup> On the websites, the link to the terms and conditions could either be accessed via a link located close to the reviews or through the general 'small print' of the websites (i.e., by scrolling to the end of the page and clicking on the T&C section).

<sup>75</sup><https://www.konsumentverket.se/contentassets/ce53a8b52bad4bf6b0e9138487ab4302/pm---granskning-av-konsumentrecensioner-pa-forsakringsomradet.pdf>

<sup>76</sup> <https://www.vzbv.de/pressemitteilungen/online-bewertungen-null-sterne-beim-marktcheck>

<sup>77</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines\\_en#google](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/social-media-and-search-engines_en#google)

on an online store<sup>78</sup> for misleading consumers in the sale of various consumer products. The online store posted fake positive reviews and hid the negative reviews. In 2021, ACM acted against influencers using fake likes and fake followers<sup>79</sup>. The Polish Office of Competition and Consumer Protection (UOKiK) acted in 2023 against companies engaging in the sale of false consumer reviews<sup>80</sup>. A German court ruled in a 2022 judgement that the total number of reviews included in an average score and the period of time in which the reviews were submitted constitute ‘material information’ within the meaning of Article 7(1) UCPD<sup>81</sup>.

Many problems concerning review fraud originate from the actions of **fake review ‘brokers’** – specialised illicit businesses that organise (especially on social networks) the posting of fake reviews by users (who can be actual users or buyers of the products in question) for the benefit of businesses that engage these brokers to promote their business on online marketplaces or specialised review tools. Moreover, there have been reports of review brokers offering businesses to organise the supply of fake positive reviews on review sites and then retaliating against those who refuse by organising the posting of fake negative reviews. Some of the businesses concerned in the EU report that they bring criminal complaints and take private enforcement actions against the fake review brokers. Another challenge in this area is AI-generated reviews which might be more difficult to detect.

Next to enforcement activities, some Member States **issued guidelines** contributing to awareness-raising about the applicable rules in this area<sup>82</sup>.

The Commission also promotes **voluntary measures by market operators**. In November 2023, 11 online platforms operating in the EU (Allegro, AliExpress, Amazon, bol.com, CDiscount, eBay, eMAG, Etsy, Joom, Rakuten France and Wish) signed the Consumer Protection Pledge. The voluntary commitments apply from July 2024 and include measures to make consumer reviews more transparent and reliable, for instance clearly presenting for users incentivised reviews<sup>83</sup>. The signatories will report every 6 months on the application of the commitments. Specifically for tourism accommodation, the Commission is also preparing a Code of Conduct for Online Ratings and Reviews. It is expected to increase consistency in the provision of quality accommodation services and improve comparability and transparency for consumers across the EU<sup>84</sup>.

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<sup>78</sup> <https://www.acm.nl/en/publications/acm-fines-online-store-trendx-having-misled-consumers>

<sup>79</sup> <https://www.acm.nl/en/publications/influencers-stop-using-fake-likes-and-fake-followers-following-warning-issued-acm>

<sup>80</sup> [https://archiwum.uokik.gov.pl/aktualnosci.php?news\\_id=20066](https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=20066)

<sup>81</sup> The case concerned a defendant who operated the website offering the services of real estate agents. It advertised that its customers had, on average, rated its real estate agents at 4.7 out of 5 possible stars without providing any further information. Available at: [Hamburg - 315 O 160/21 | LG Hamburg 15. Zivilkammer | Urteil | Wettbewerbsverstoß im Internet: Irreführung bei Werbung mit Kundenbewertungen in einem ... \(landesrecht-hamburg.de\)](#).

<sup>82</sup> For example, Belgium (<https://economie.fgov.be/sites/default/files/Files/Entreprises/guidelines-avis-en-ligne.pdf>).

<sup>83</sup> [https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/consumer-protection-pledge\\_en?prefLang=bg#:~:text=The%20Consumer%20Protection%20Pledge%20sets,and%20Digital%20Consumer%20Rights%20Commitments](https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/consumer-protection-pledge_en?prefLang=bg#:~:text=The%20Consumer%20Protection%20Pledge%20sets,and%20Digital%20Consumer%20Rights%20Commitments)

<sup>84</sup> The Code of Code of Conduct for Online Ratings and Reviews for tourism accommodation is a recommendation in the ‘Study on the feasibility of possible initiatives at EU level and establishment of a multistakeholder platform on quality of tourism accommodation’. Executive summary available at: <https://op.europa.eu/en/publication-detail/-/publication/957eef55-24e8-11ed-8fa0-01aa75ed71a1/language-en>.

In conclusion, **the challenges with fake reviews, whether ‘positive’ or ‘negative’, are on the rise.** Traders giving access to reviews which they choose to present as consumer reviews, especially those traders that are strongly exposed to the illicit activities of fake review brokers, must invest more in stopping fake reviews. Online platforms also need to abide by the rules under the DSA to curb illegal content. Traders that give access to reviews must also be transparent towards consumers, so that consumers get a balanced and realistic understanding of the conditions in which reviews are collected and the limitations regarding their reliability. The national enforcement authorities should pay particular attention to this area and where appropriate use the CPC cooperation system, especially regarding the illicit activity of fake review brokers who are acting in clear breach of the UCPD. In this respect, co-operation with the industry is important.

## 12. Transparency of marketplaces about contractual parties

The Modernisation Directive added to the UCPD (Article 7(4)(f)) and CRD (Article 6a(1)(b)) new provisions on transparency regarding contractual parties on online marketplaces. The providers of online marketplaces are required to provide consumers with information on the status of the third party offering the goods, services or digital content, on whether consumer protection legislation applies and which trader (third-party supplier or online marketplace) is responsible for ensuring consumer rights related to the contract (such as the delivery of the goods or the right of withdrawal).

Furthermore, the DSA obliges online marketplaces to gather information on the identity of the trader, make the best efforts to assess whether the information is reliable and complete, display such information to consumers and, when requested, provide such information to authorities, as well as to suspend contractual relationships with traders providing inaccurate or incomplete information (the so called ‘Know-Your-Business-Customer’ or ‘KYBC’ rules).

The compliance test and the consumer survey in the context of the supporting study, as well as the 2023 CCS explored traders’ compliance with this transparency requirement and consumers’ perceptions of transparency on the marketplaces.

As regards **consumer perceptions**, in the CCS 2023, 7% of the consumers surveyed indicated that they had experienced problems after purchasing a product on an online marketplace and finding out it was purchased from a private individual rather than professional seller. In the consumer survey carried out for the supporting study, 47% of consumers at least sometimes found it unclear when shopping online who the seller was and who would be responsible for delivering their products, while 35 % indicated that they rarely or never encountered this ambiguity.

The **compliance test** of 50 online marketplaces across 10 Member States in the supporting study also looked into issues of transparency for consumers about contractual parties (total of 212 products assessed). In 65.6% of instances, information on whether the seller was the marketplace itself or another party was available on the search results page. On the products page, the share of products bearing an indication on who the trader was increased to 85% of products on 46 websites, indicating a reasonably high level of transparency. Furthermore, in these test cases, information on the seller’s status – professional or an individual – was clear and easy to discern for researchers in 65% of cases.

In conclusion, the research on online marketplaces shows that they have implemented the new information requirement regarding the status of the third-party suppliers to a considerable extent. The share of consumers who reported having experienced problems due to not realising the non-

professional status of the seller is relatively small. At the same time, many online shoppers indicate having experienced uncertainty regarding the identity of the seller and the arrangements for their transaction.

### 13. Personalised pricing

Traders can personalise the price of their offers for specific consumers or groups of consumers based on automated decision-making and profiling of consumers. The Modernisation Directive added to the CRD a new information requirement for traders to inform consumers buying online that the price was personalised on the basis of automated decision-making (Article 6(1)(ea)). This transparency requirement at the point of sale complements the General Data Protection Regulation<sup>85</sup> that sets out the rules for the underlying collection and processing of personal data.

**Evidence on the practice of personalised pricing is still emerging.** The Commission's 2018 and 2022 studies<sup>86</sup> did not find consistent and systematic evidence of personalised pricing or offers. The European Parliament's 2022 Study on personalised pricing concluded that empirical evidence on the scale of personalised pricing is not conclusive<sup>87</sup>. Research by consumer organisations has found evidence of price personalisation in the online dating, accommodation and airline sectors<sup>88</sup>.

The recent consumer surveys give additional information on **consumer perceptions** regarding personalised pricing. In the consumer survey for the supporting study, respondents were asked about their experiences in the past 12 months with receiving a discount or a price that was presented as 'personalised' for them, either through a website or via email. Around half (55%) of respondents felt that they experienced this type of personalisation at least 'sometimes'. As part of the 2023 CCS, consumers were asked about their online buying experiences over the past 12 months, specifically in terms of how often they noticed different prices for goods or services compared to their peers. The results revealed that 39% of the consumers surveyed thought they had encountered such a situation at least 'sometimes' (compared to 38% in the 2021 CCS).

As regards **compliance by traders with the new information obligation under the CRD**, the compliance test for the supporting study analysed a total of 207 products on 85 websites/apps. In no instance did the researchers see an express indication that the price was personalised on the basis of automated processing. Furthermore, the researchers tried to identify the possible price differences by accessing the site with their usual browser and a 'clean' browser with the trackers removed<sup>89</sup>. In this manner, they identified price differences on 10 out of 85 websites/apps, or for

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<sup>85</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>86</sup>2018 personalisation study, 2022 dark patterns study, available at: [https://commission.europa.eu/publications/consumer-market-study-online-market-segmentation-through-personalised-pricingoffers-european-union\\_en](https://commission.europa.eu/publications/consumer-market-study-online-market-segmentation-through-personalised-pricingoffers-european-union_en) and [https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/evidence-based-consumer-policy/behavioural-research\\_en](https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/evidence-based-consumer-policy/behavioural-research_en).

<sup>87</sup>See p. 12 of the study, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL\\_STU\(2022\)734008\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU(2022)734008_EN.pdf).

<sup>88</sup> 'Each Consumer a Separate Market? – BEUC position paper on personalised pricing' (2023), available at: <https://www.beuc.eu/position-papers/each-consumer-separate-market-beuc-position-paper-personalised-pricing>.

<sup>89</sup> The first search made by the researchers using their usual browser, while signed into the accounts and websites they use on a regular basis. For the second 'clean' search, the researchers used a VPN locating them in the same country, making sure they were logged out of all accounts, and performed the searches on a browser they never use and cleared of cookies before each search.



6% of a total of 207 products. Interestingly, in most cases where the price difference was identified by researchers, the search using a browser incorporating personal information returned a lower price than the one made using a ‘clean’ browser with the trackers removed.

As regards **EU-level enforcement**, the national authorities within the CPC network, in the 2022 coordinated action led by the Dutch authority concerning the online marketplace Wish.com, found that it had not been clear whether and how the trader applied price personalisation. Wish decided to stop their personalised pricing techniques in the EU<sup>90</sup>. In 2024, following a dialogue with the Commission and national consumer authorities in the CPC network, Tinder committed to informing consumers that discounts they propose for premium services are personalised by automated means<sup>91</sup>. Apart from these coordinated actions, so far, Member States have not indicated further enforcement actions regarding the CRD information requirements on personalised pricing.

In conclusion, sellers in the EU do not appear to identify their price offers as being based on automated processing of the targeted customer’s profile. This obviously does not exclude the possibility that such price personalisation is taking place; also, consumers perceive price differences that could be based on automated processing and hence be subject to the new CRD information requirement. The small-scale test performed for this report suggests that price personalisation could be happening in the case of some traders, but these results do not allow general conclusions to be drawn, including as to the practice’s advantage or disadvantage for the consumers concerned.

#### 14. Reselling events tickets acquired by automated means

Scalper bots can be used to automatically purchase products in high demand with a view to reselling them at a higher price. The Modernisation Directive added to the UCPD a new point 23a of Annex I<sup>92</sup> prohibiting traders from reselling to consumers tickets to cultural and sports events that they have acquired by using specialised software (‘bots’) to circumvent the technical limits imposed by the primary sellers of tickets. Other provisions of the Modernisation Directive are also relevant for secondary ticketing marketplaces, e.g. the new requirement (in the UCPD and CRD) for online marketplaces to inform consumers whether the person selling tickets is a trader or a consumer.

Event organisers complain about the practices of resellers and resale platforms that inflate the prices of tickets, whereas resale platforms are concerned about primary sellers expanding into the secondary resale market and impeding ticket resale via competing secondary platforms. The new prohibition of the UCPD applies when primary ticket sellers have implemented technical measures to limit the bulk acquisition of their tickets for the purposes of resale. It can only be enforced if such primary sellers detect and report the illicit acquisition of tickets. The supporting study did not identify examples of case law and enforcement actions taken so far by national authorities or private organisations against resellers of events tickets acquired using scalping bots.

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<sup>90</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services\\_en#aliexpress-and-wish](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services_en#aliexpress-and-wish)

<sup>91</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_1344](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1344)

<sup>92</sup> This prohibition is without prejudice to any other national measures to protect the legitimate interests of consumers and the safeguarding of cultural policy and access to events, such as regulating the resale price of the tickets. Some Member States, e.g. Ireland, have enacted specific rules on the matter.

As regards ticket resale practices more generally, in a **CPC coordinated action**, following a dialogue with the Commission and national consumer authorities, in 2024 Viagogo, an online secondary marketplace for tickets to live events, has committed to better inform consumers on the conditions under which tickets are resold<sup>93</sup>. There have been also some reports of national cases relating to (unfair) ticket reselling practices<sup>94</sup>.

According to **the consumer survey** carried out for the supporting study, 33% of consumers indicated that at least ‘sometimes’ they experienced a situation where they wanted to purchase a ticket for an event, but only saw tickets from secondary sellers available at a higher price<sup>95</sup>. Half of the respondents did not experience or could not recall experiencing such a situation. In the 2023 CCS, when replying to a more general question relating to reselling practices not limited to event tickets, 21% of consumers reported that they bought, at least ‘sometimes’, a new product at a higher price from a reseller as it was sold out on the brand’s official website.

In the **targeted consultation in the context of the supporting study**, several stakeholders highlighted problems in relation to ticket reselling in general and suggested additional regulatory measures, such as obliging ticket resellers to disclose additional information (e.g. the original face value of the ticket, any additional fees or charges, and the seat location), setting limits on resale prices (e.g. no more than the original seller’s price of the ticket or imposing a cap).

In conclusion, the UCPD amendment made by the Modernisation Directive addresses one specific aspect of ticket resale that has not yet been subject to concrete enforcement. Its practical application requires close co-operation and interest of the primary sellers to curb the bulk acquisition of tickets for the purpose of reselling them. The enforcement of the UCPD, and where relevant also the CRD, remain highly relevant for the broader issues related to ticket reselling, such as tackling misleading information or omission of information about the nature of the resale offer.

## 15. Telephone calls at basic rate in passenger transport services

Article 21 of the CRD protects consumers against additional charges if they need to call the trader about a concluded contract. Such calls must not require the consumer to pay more than the ‘basic rate’<sup>96</sup>. The Modernisation Directive extended the scope of Article 21, which now also applies to passenger transport services.

The **compliance test** for the supporting study gives some insights into compliance with this requirement by screened traders. It looked at the types of telephone numbers used by the passenger transport companies (airlines, bus and railway companies, and ticket intermediaries, 50 websites

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<sup>93</sup>[https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services\\_en#viagogo](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services_en#viagogo)

<sup>94</sup> For example, enforcement action against a ticket resale company in France, reported at: [https://www.prodiss.org/sites/default/files/atoms/files/presse\\_release\\_prodiss\\_gsc\\_20220203.pdf](https://www.prodiss.org/sites/default/files/atoms/files/presse_release_prodiss_gsc_20220203.pdf).

<sup>95</sup> Question 5.1 of the consumer survey: ‘Have you experienced the following situations in the past 12 months when you purchased or attempted to purchase any type of products or services online, including digital content/services/subscriptions?’.

<sup>96</sup> As clarified by the CJEU in Case C-568/15, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV v comtech GmbH*, the concept of ‘basic rate’ means that call charges relating to a contract concluded with a trader to a telephone helpline operated by the trader may not exceed the cost of a call to a standard geographic landline or mobile telephone line.

in total), i.e. whether these numbers are normal landline/mobile, premium or short/free numbers. Overall, the test showed that the majority of the screened websites' hotlines (69%) applied a normal domestic rate (i.e. normal fixed/mobile rate), a quarter offered a premium- rate telephone service (in most such instances, the cost was transparently communicated to the consumer) and around 6% offered a toll-free telephone number. Moreover, in these test cases, the premium numbers usually related to services other than post-contractual consumer services offered by the transport company (such as sales).

In conclusion, the available evidence so far suggests that passenger transport companies have complied with the new requirement to a large extent.

## 16. Conclusions

This report reflects the results of the consultations and data-gathering on the transposition of the Modernisation Directive and experience with its application and enforcement in the relatively short period since its entry into application.

As regards **transposition**, the results are quite encouraging. Most of the provisions have been transposed into national laws in a relatively straight-forward way, in many cases verbatim. The problems identified mostly concern provisions that required more complex integration into the national legal framework, especially the rules on penalties for infringements and consumer remedies in cases of unfair commercial practices.

This report focused on the main specific subject areas addressed by the Modernisation Directive, setting out the available evidence and drawing conclusions regarding those specific areas to the extent possible at this stage. The short reporting period does not allow definitive conclusions to be drawn as to the **effectiveness** of the changes introduced by the Modernisation Directive. However, there are positive signs that these changes, which reinforced the legal framework, are contributing to the strengthening of consumer protection.

The **enforcement experience**, albeit currently limited, is developing at least in the most complex areas with a strong direct practical impact on consumers and traders, e.g. with regard to price promotions and consumer reviews, including through coordinated actions in the CPC network. In contrast, the new rules on fines for infringements in cross-border cases subject to the CPC coordinated actions or the rules on remedies in the UCPD have not yet been applied in practice, according to the data available.

The implementation of several rules of the Modernisation Directive requires further attention. As regards **price promotions**, in addition to the transposition issues in some Member States and divergent implementation by Member States of the exception for perishable goods, the markets appear to have reacted to the new regulation by switching to price comparisons and thus creating new types of transparency problems. Problems with **fake reviews** are clearly on the rise. Traders giving access to reviews that they present as consumer reviews, especially those that are strongly exposed to the illicit activities of fake review brokers, must invest more in stopping fake reviews. Reviews should also become a stronger priority for the enforcement authorities, including under the DSA.

On **‘dual quality’ marketing**, the adopted legislative solution based on case-by-case assessment allows tackling this problem taking into account the different situations of consumers and Member States. It appears necessary to focus on the implementation and enforcement of the new rules. The Commission will continue monitoring the situation and facilitate cross-border enforcement in the CPC network when problems of shared interest arise.

With regard to **sales events** (product demonstrations), while consumer perceptions give reason for concern as to the fairness of commercial practices in the context of this relatively little-used selling technique, the consultations undertaken for this report showed no strong calls for EU legislative action. Rather, the existing UCPD rules that fully apply to sales events should be enforced.

Overall, it is evident that the **evolution of consumer online markets and new technologies** poses challenges and requires close monitoring. In this respect, this report complements the ongoing Fitness Check of EU consumer law on digital fairness, which assesses in a broader manner the fitness of existing consumer protection rules in the digital area. Moreover, **effective enforcement** is key to achieving the full potential of the changes made by the Modernisation Directive.