

CONSULTATIVE DOCUMENT

REVIEW OF LEGISLATION ON THE IMPLEMENTATION OF DIRECTIVE
98/6/EC ON CONSUMER PROTECTION IN THE INDICATION OF PRICE
OF PRODUCTS OFFERED TO CONSUMERS

Competition & Consumer Policy Section
Department of Enterprise, Trade and Employment
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1. INTRODUCTION

The Department of Enterprise, Trade and Employment would welcome comments from interested parties on the implementation of EU Directive 98/6/EC on consumer protection in the indication of prices of products offered to consumers. This Directive was transposed by way of S.I. No 639 of 2002 and came into force on 1st March 2003. This document gives a broad outline of issues that are under review in light of the transposition of this Directive. Comments are not confined to these issues. Comments are welcomed on any issues relating to the indication of product prices.

2. PURPOSE OF THE DIRECTIVE

The Directive imposes an obligation on traders to indicate the final selling and unit prices of products for sale to consumers. The final price is defined as the price inclusive of VAT and all other taxes. The two concepts used in the Regulations are selling price and unit price. Selling price is the final price to the consumer and unit price is the price per kilo or litre etc. It applies to foodstuffs and non-foodstuffs. The objective of the Directive is to improve consumer information and to facilitate the comparison of prices by consumers. The text of Directive 98/6/EC is available at Appendix 1.

3. PURPOSE OF THE CONSULTATION

The European Commission published on 21st June 2006 a public consultation document [Com(2006) 325 final] to examine how Member States have implemented this Directive. The Commission had sought views from interested parties by 1st September 2006. The Commission has been informed that the Department intends undertaking a public consultation process seeking comments from consumers and business alike. The text of the Commission consultation document is available at Appendix 2.

This consultation will provide the Minister and the Department with a more detailed appreciation on how the Regulations are operating and also provide a

valuable input into Irish policy on any new proposal put forward by the Commission following their consultation process. In this respect persons or organisations who have responded or intend to respond to the Commission's consultation paper are invited to copy this material to the Department.

4. SCOPE OF THE LEGISLATION REVIEW

The scope of SI 639 of 2002 is confined to relationships between traders and consumers. It applies to goods sold in retail outlets, mail order, catalogue based sales and goods purchased from the Internet. The legislation does not apply to sales between suppliers and retailers. Text of the existing legislation, S.I. 639 of 2002, is attached at Appendix 3.

The following is a non-exhaustive list of issues which have emerged since the Regulations were implemented:

- (i) Exemption for small businesses from indicating unit price
- (ii) Exemption from indicating unit price for pre-packaged goods under 50g/50ml
- (iii) Display of sales notices
- (iv) Indication of unit prices in advertising
- (v) Indication of selling price in advertising
- (vi) Internet Shopping
- (vii) Dual pricing
- (viii) Delivery charges
- (ix) Sale of tiles and meat
- (x) Itinerant traders

Please note that comments need not be confined to these issues.

(i) Exemption for small businesses from indicating unit price

The Directive provides that Member States may exempt certain small retail businesses from the requirement to unit price pre-packaged products for a transitional period. The basis for the exemption is that the obligation to unit price may constitute an excessive burden for such businesses because of the

number of products on sale or the size of the sales area. It was decided that premises where the trader does not use equipment for printing shelf labels or equipment for point of sale scanning would be exempt from indicating the unit price. This was transposed under regulation 5(2)(g)(i) of S.I. 639 of 2002. However the Commission have pointed out that Article 6 upon which this exemption is based is time limited. Therefore there is the possibility that the Commission will introduce new proposals abolishing this exemption or limiting it in some way.

(ii) Exemption from indicating unit price for pre-packaged goods under 50g/50ml

Pre-packaged products with content equal to or less than 50g/50ml are exempt from indicating the unit price. This was transposed under regulation 5(2)(a) of S.I. 639 of 2002. Does this exemption detract from consumer information or does it cater for a practical issue relating to smaller products in a confined area. Should this exemption be kept, increased or directed at specific products?

(iii) Display of sales promotions

Products for sale at less than the previous selling price or unit price must indicate the reduction of price by fraction or percentage. This was transposed under regulation 6(2) of S.I. 639 of 2002. Should retailers have to also display the monetary value of the reduction?

(iv) Indication of unit prices in advertising

Under regulation 5 (4) (b) of S.I. 639 of 2002, advertisements that are solely aural, on television and/or cinema are exempt from indicating the unit price of products. The Commission point out that no such derogation exists in the Directive. Consideration may have to be given to revoking this derogation.

(v) Indication of selling price in advertising

Under regulation 4 (2) (b) of S. I. No. 639 of 2002 the obligation to display the selling price does not apply to an advertisement for a product. Should certain

advertisements for products have to display the selling price? Examples might be advertisements from retailers as opposed to generic advertisements on behalf of manufacturers.

(vi) Internet Shopping

The Regulations as drafted exclude distance contracts from the definition of advertisements. This means that there is no obligation to indicate the unit price if the selling price is shown in an advertisement in a distance contract. It is arguable whether this is compatible with the spirit of the Regulations. Consideration may have to be given to obliging all advertisements which mention the selling price to have also to state the unit price.

(vii) Dual pricing

Some products (examples would be such as clothing or magazines from chain stores headquartered outside the State) display two or even three different prices. For example, certain items can indicate prices in sterling and euros or two different euro prices (e.g. German euro price and Irish euro price). It has been suggested that such a practice is confusing for the consumer and goes against the principle of displaying the selling and unit price in an unambiguous and easily identifiable manner. Should this practice be prohibited entirely or for specific products in order to provide clarity and transparency for the consumer?

(viii) Delivery charges

A trader can charge for the delivery of certain products, e.g. furniture. Consideration should be given as to whether these charges can be included in the final selling prices and how this could be achieved.

(ix) Sale of Tiles and Meat

Enforcement of the Regulations has shown a significant reluctance on the part of some retailers of tiles and meat to abide by the Regulations. In many cases retailers use only the imperial measure. Under the European Communities (Units of Measurement) (Amendment) Regulations, 2000 imperial measures can be used as a supplement to the metric measure until

31st December, 2009. In order to clarify the situation and create legal certainty, consideration should be given to incorporating a specific measure in the Regulations dealing with the use of units of measurement generally or specifically to problematic areas (such as tiles and meat). Consideration might also be given to a prohibition on the advertising of units of measurement not complying with the law.

(x) Itinerant Traders

Itinerant trader is defined in regulation 2 as a trader who as a pedestrian or from a train, aircraft, vehicle, ship, stall, barrow, or other mobile sales unit offers products to consumers other than by means of pre-printed material. While such traders are exempt from indicating unit price under regulation 5 (2) (g) (ii) they still have an obligation to display the selling price. However the Regulations do not appear to give powers to authorised officers to enter and inspect premises operated by itinerant traders because of the definition of such premises. Should trains, aircraft ships come under the full application of the Regulations or should there be a selective application of the Regulations to itinerant traders.

Important note: any proposals arising out of this consultation process are subject to the legal advice of the Office of the Attorney General.

5. COMMENTS

Comments should be submitted in writing and preferably by email before Friday, 17th November 2006 to: conspol@entemp.ie

Written comments by post should be marked "Unit Price Regulations Consultation" and addressed to:

Competition and Consumer Policy Section
Department of Enterprise, Trade and Employment
Earlsfort Centre
Lower Hatch Street
Dublin 2.

Please note: Comments made for the EU consultation should be forwarded directly to the Commission according to details in the EU consultation document. It would be appreciated if these comments could also be copied using the above details. Submissions received will be used to assist the Department in its consideration of domestic issues relating to the indication of product prices.

This consultation refers to S. I. No. 639 of 2002 which transposes Directive 98/6/EC. There is a separate regime of domestic price display regulations made under the Prices Acts 1958 to 1972 (covering pubs, petrol stations restaurants and hairdressers). This will be the subject of a separate consultation.

APPENDICES

[Appendix 1 - Directive 98/6/EC](#)

[Appendix 2 - European Commission public consultation document](#)

[Appendix 3 - S.I. 639 of 2002](#)