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Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

26 September 2024 (\*)

( Reference for a preliminary ruling – Consumer protection – Indication of the prices of products – Directive 98/6/EC – Article 6a – Price reduction announcements – Conditions – Concept of ‘prior price’ – Obligation to determine the announced price reduction on the basis of the prior price )

In Case C-330/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), made by decision of 19 May 2023, received at the Court on 25 May 2023, in the proceedings

**Verbraucherzentrale Baden-Württemberg eV**

v

**Aldi Süd Dienstleistungs SE & Co. OHG,**

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur), President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Aldi Süd Dienstleistungs SE & Co. OHG, by C. Fürsen and A. Starcke, Rechtsanwälte,
- the Czech Government, by S. Šindelková, M. Smolek and J. Vláčil, acting as Agents,
- the Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,

- the Netherlands Government, by M.K. Bulterman and M.H.S. Gijzen, acting as Agents,
  - the Polish Government, by B. Majczyna, acting as Agent,
  - the Finnish Government, by H. Leppo, acting as Agent,
  - the Norwegian Government, by F. Bergsjø and P.A. Tønnessen, acting as Agents,
  - the European Commission, by B.-R. Killmann, P. Ondrůšek and N. Ruiz García, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 6a(1) and (2) of 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 1998 L 80, p. 27), as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 (OJ 2019 L 328, p. 7) ('Directive 98/6')

2 The request has been made in proceedings between Verbraucherzentrale Baden-Württemberg eV (consumers' association of the Land of Baden-Württemberg, Germany) ('the consumers' association') and Aldi Süd Dienstleistungs SE & Co. OHG ('Aldi'), concerning indications of price reductions in that company's advertisements relating to the sale of food items.

### **Legal context**

#### ***Directive 98/6***

3 Recitals 1, 2, 6 and 12 of Directive 98/6 state as follows:

'(1) ... transparent operation of the market and correct information is of benefit to consumer protection and healthy competition between enterprises and products;

(2) ... consumers must be guaranteed a high level of protection; ... the Community should contribute thereto by specific action which supports and supplements the policy pursued by the Member States regarding precise, transparent and unambiguous information for consumers on the prices of products offered to them;

...

(6) ... the obligation to indicate the selling price and the unit price contributes substantially to improving consumer information, as this is the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and hence to make informed choices on the basis of simple comparisons;

...

(12) ... Community-level rules can ensure homogenous and transparent information that will benefit all consumers in the context of the internal market ...'

4 Article 1 of that directive is worded as follows:

'The purpose of this Directive is to stipulate indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.'

5 Under Article 4(1) of that directive, the selling price must be unambiguous, easily identifiable and clearly legible.

6 Article 6a(1) and (2) of that directive provides:

‘1. Any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction.

2. The prior price means the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction.’

7 Article 6a was inserted in Directive 98/6 by Directive 2019/2161, recital 1 of which states:

‘Article 169(1), and point (a) of Article 169(2), of the [TFEU] provide that the Union is to contribute to the attainment of a high level of consumer protection through measures adopted pursuant to Article 114 TFEU. Article 38 of the Charter of Fundamental Rights of the European Union ... stipulates that Union policies shall ensure a high level of consumer protection.’

### ***Directive 2005/29/EC***

8 Article 3 of 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 2005 L 149, p. 22), headed ‘Scope’, provides in paragraphs 1 and 4 thereof:

‘1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

...

4. In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects.’

### ***The 2021 guidelines***

9 Section 2 of the Commission’s communication ‘Guidance on the interpretation and application of Article 6a of [Directive 98/6]’ (OJ 2021 C 526, p. 130) (‘the 2021 guidelines’) concerns the ‘indication of the “prior price”’. Point 2.1 of that section headed ‘General rules’ is worded as follows:

‘...

Except for the goods covered by the regulatory choices referred to in paragraphs 3 to 5 of Article 6a [of Directive 98/6], Member States may not provide for a shorter period than 30 days for establishing the “prior” price. The purpose of this reference period of at least 30 days is to prevent traders from juggling with prices and displaying fake price reductions, such as increasing the price for a short period in order to decrease it afterwards by presenting it as a (significant) price reduction that misleads consumers. The 30-day period for setting the reference “prior” price, therefore, ensures that the reference price is real and not merely a marketing tool to make the reduction seem attractive.

...

Accordingly, the price reduction must be presented using the indicated “prior” price as reference, i.e. any indicated percentage reduction must be based on the “prior” price as established in accordance with Article 6a ...’

## **The dispute in the main proceedings and the questions referred for a preliminary ruling**

10 Each week, Aldi produces advertising brochures containing offers from different subsidiaries of the Aldi Süd group ('the Aldi group'). Those brochures are also available on the internet.

11 The brochure during the week from 17 to 22 October 2022 advertised, inter alia, 'super fresh products' as 'reduced', including 'Fairtrade organic bananas, loose' and 'Rainforest Alliance pineapples'. The price of each of those two products was stated beside their photographic representation, in the form of a white rectangle, in which two different price indications appeared, namely, in the middle, a price indication in large characters (EUR 1.29 for the bananas and EUR 1.49 for the pineapples) and, in the lower right corner, another price indication in smaller characters which had been struck through (EUR 1.69 for each of the two products). For the bananas, a rectangle in the colours of the German flag, partially superimposed onto the one indicating the price, specified the percentage reduction of that price. A similar superimposed rectangle was used for the offer concerning the pineapples, with the text 'price highlight' ('*Preis-Highlight*'). The following text appeared under each of the two white rectangles regarding the price: 'Last selling price. Lowest price in the last 30 days', followed by a third price indication (EUR 1.29 for the bananas and EUR 1.39 for the pineapples).

12 Specifically, the indications relating to the price of those bananas and pineapples was presented in the following manner, respectively:



(bananas)

(pineapples)

13 It is apparent from the order for reference that the price displayed for those bananas in the stores of the Aldi group was consistently EUR 1.69/kg from mid-September 2022, with the exception of the week from 19 to 24 September when the reduced price of EUR 1.29/kg was applied. As regards the pineapples, their unit prices were between EUR 1.39 and EUR 1.79 during the five weeks preceding the offer in the brochure. The price immediately prior to that offer was EUR 1.69.

14 The consumers' association considered that such an advertisement negatively impacted consumers' interests and was unfair and thus brought an action before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), the referring court, requesting that Aldi be ordered to desist from advertising to consumers, itself or through a third party, the sale of food items, indicating price reductions in the form of a percentage, where the reduction is not determined on the basis of the lowest price charged in the Aldi group's stores in the 30 days prior to that reduction. The consumers' association also requests that court to order Aldi to desist from advertising to consumers, itself or through a third party, a price reduction of a food

item as a 'price highlight', while indicating a higher price than that charged in the Aldi group's stores in the previous 30 days.

15 The referring court takes the view that the outcome of the dispute before it depends on the interpretation of Article 6a(1) and (2) of Directive 98/6 and indicates that it does not share the consumers' association's view that the basis for determining the price reduction offered to consumers must be the 'prior price', within the meaning of that Article 6a(2). That court takes the view that such an interpretation – even though it follows from the 2021 guidelines – cannot be inferred from that directive, which, in essence, merely determines the information that must be provided to consumers and the time for doing so, without however specifying the manner in which that information must be provided.

16 The referring court notes that, since Directive 98/6 does not regulate the specific aspects relating to the provision of information, with the exception of the area covered by Article 6a thereof, it is necessary rather to assess whether the information at issue was provided to consumers in accordance with the relevant provisions of Directive 2005/29. However, it accepts that, in certain cases, the indication of a price reduction in the form of a percentage which does not refer to the 'prior price', within the meaning of Article 6a(2) of Directive 98/6, is unfair and, therefore, is contrary to Directive 2005/29. The same could also apply, *mutatis mutandis*, to advertising messages promoting the alleged very advantageous nature of a price reduction.

17 In those circumstances, the Landgericht Düsseldorf (Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 6a(1) and (2) of [Directive 98/6] to be interpreted as meaning that a percentage mentioned in an announcement of a price reduction may relate only to the prior price within the meaning of Article 6a(2) of [Directive 98/6]?

(2) Is Article 6a(1) and (2) of [Directive 98/6] to be interpreted as meaning that emphasis in advertising which is intended to stress the reasonable price of an offer (such as the description of the price as a "Price Highlight"), where it is used in an announcement of a price reduction, must relate to the prior price within the meaning of Article 6a(2) of [Directive 98/6]?'

### **Consideration of the questions referred**

18 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6a(1) and (2) of Directive 98/6 must be interpreted as meaning that it requires that a price reduction of a product announced by a trader in the form of a percentage, or in the form of a promotional statement intended to highlight the advantageous nature of the announced price, must be determined on the basis of the 'prior price', within the meaning of paragraph 2 of that article.

19 In accordance with Article 6a(1) of Directive 98/6, 'any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period of time prior to the application of the price reduction'. The concept of 'prior price' is defined in paragraph 2 of that article as 'the lowest price applied by the trader during a period of time not shorter than 30 days prior to the application of the price reduction'.

20 In the first place, it is true that the wording of Article 6a(1) of Directive 98/6 does not in itself make it possible to determine whether the price reduction in an announcement must be calculated on the basis of the 'prior price', as defined in paragraph 2 of that article. The fact remains, however, that the term 'reduction', in everyday language, refers to a decrease on a price previously charged.

21 In the second place, in order to determine the meaning and scope of a provision of EU law, it must be interpreted taking into account, not only the terms of that provision, but also, *inter alia*, the specific

objectives pursued by it and the objectives pursued by the rules of which that provision is part (see, to that effect, judgment of 22 June 2021, *Staatssecretaris van Justitie en Veiligheid (Effects of an expulsion decision)*, C-719/19, EU:C:2021:506, paragraph 70).

22 As regards the objectives of Directive 98/6, it is intended, in accordance with Article 1 of that directive, read in the light of recital 6 thereof, to improve consumer information and to facilitate comparison of the selling price of products offered by traders to consumers, in order to enable consumers to make informed choices. Recital 1 of that directive highlights the importance of the transparent operation of the market and correct information for consumer protection. Recital 12 of Directive 98/6 states that the purpose of that directive is to ensure homogenous and transparent information that will benefit all consumers in the context of the internal market. In addition, it follows from Article 4(1) of that directive, read in the light of recital 2 thereof, that the selling price of products offered to consumers must be unequivocal, easily identifiable and clearly legible, so that that information is precise, transparent and unambiguous (see, to that effect, judgment of 29 June 2023, *Verband Sozialer Wettbewerb (Containers on which a deposit is charged)*, C-543/21, EU:C:2023:527, paragraph 25).

23 Furthermore, recital 1 of Directive 2019/2161, which inserted Article 6a into Directive 98/6, expressly refers to Article 38 of the Charter of Fundamental Rights of the European Union. The latter provision, like Article 169 TFEU, is intended to achieve, in EU policies, a high level of consumer protection (see, to that effect, judgment of 23 March 2021, *Airhelp*, C-28/20, EU:C:2021:226, paragraph 49). The same objective is set out in recital 2 of Directive 98/6.

24 To interpret Article 6a(1) of Directive 98/6 as meaning that it is sufficient, in a price reduction announcement, to mention the ‘prior price’, within the meaning of paragraph 2 of that article, without that price constituting the actual basis for calculating that reduction, would risk – as noted in particular by the Dutch, Hungarian and Norwegian Governments in their written observations – undermining those objectives and, in particular, that of improving consumer information, which requires that information on prices and the methods for calculating the announced reduction be entirely unambiguous.

25 As regards, furthermore, the specific objectives pursued by Article 6a of Directive 98/6, that provision is intended, as indicated in the 2021 guidelines and as the Czech and Polish Governments and the Commission pointed out in their written observations, to prevent traders from deceiving the consumer, by increasing the price charged before announcing a price reduction and thus displaying false price reductions.

26 Thus, to interpret Article 6a(1) of Directive 98/6 as meaning that it is sufficient, in a price reduction announcement, to mention the ‘prior price’, within the meaning of paragraph 2 of that article, for mere information purposes, without that reduction being in fact determined on the basis of that price, would allow traders to undermine that specific objective by misleading consumers through announcements of price reductions which are not real, contrary to the very purpose of that Article 6a.

27 It follows that, in order to respect both the specific objective of Article 6a of Directive 98/6 and the objectives pursued by that directive in general, Article 6a(1) and (2) thereof must be interpreted as meaning that in an announcement concerning a reduction in the selling price of a product, that reduction must be determined by reference to the ‘prior price’ of that product, within the meaning of paragraph 2 of that article. It follows that the selling price of a product presented, in an announcement, as being a reduced price cannot in fact be the same as that ‘prior price’, or be higher than it.

28 In the third place, since Article 6a of Directive 98/6 specifically regulates the aspects linked to the indication, in a price reduction announcement, of the prior price and the definition thereof, it is with regard to that provision, as interpreted in paragraphs 24 and 27 above, that it is necessary to assess the commercial practice, in relations between traders and consumers, consisting of displaying a price reduction of the product concerned which is not determined on the basis of the ‘prior price’, within the meaning of

that Article 6a(2), and not with regard to the provisions of Directive 2005/29, as is apparent from Article 3(1) and (4) of that directive (see, to that effect, judgment of 7 July 2016, *Citroën Commerce*, C-476/14, EU:C:2016:527, paragraphs 42 to 45).

29 In the light of the foregoing, the answer to the questions referred is that Article 6a(1) and (2) of Directive 98/6 must be interpreted as meaning that it requires that a price reduction of a product announced by a trader in the form of a percentage, or in the form of a promotional statement intended to highlight the advantageous nature of the announced price, must be determined on the basis of the ‘prior price’, within the meaning of paragraph 2 of that article.

#### **Costs**

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

**Article 6a(1) and (2) of 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, as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019,**

**must be interpreted as meaning that it requires that a price reduction of a product announced by a trader in the form of a percentage, or in the form of a promotional statement intended to highlight the advantageous nature of the announced price, must be determined on the basis of the ‘prior price’, within the meaning of paragraph 2 of that article.**

[Signatures]

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\* Language of the case: German.