

STATES OF JERSEY

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DRAFT GOODS AND SERVICES TAX (JERSEY) LAW 200- (P.37/2007): SECOND AMENDMENTS

Lodged au Greffe on 3rd April 2007
by Deputy A. Breckon of St. Saviour

STATES GREFFE

DRAFT GOODS AND SERVICES TAX (JERSEY) LAW 200- (P.37/2007):
SECOND AMENDMENTS

PAGE 38, ARTICLE 31 –

At the end add the following paragraph –

- “(6) The States may by Regulations make provision for the value of supplies of goods and services –
- (a) that are supplied at the same time by the same person;
 - (b) that are supplied to the same person;
 - (c) that are supplied by way of retail (rather than wholesale) sale; and
 - (d) in relation to which there is a single invoice or receipt,
- to be calculated by reference to the cumulative value of all the goods and services indicated on the invoice or receipt, rather than by reference to the individual value of each item of goods or services indicated on the invoice or receipt.”

PAGE 38, ARTICLE 32 –

At the end add the following paragraph –

- “(4) The States may by Regulations make provision for the value of imported goods –
- (a) that are imported at the same time;
 - (b) that are being imported by the same person; and
 - (c) in relation to which there is a single invoice or receipt,
- to be calculated by reference to the cumulative value of all the imported goods indicated on the invoice or receipt, rather than by reference to the individual value of each of the goods indicated on the invoice or receipt.”

PAGE 69, ARTICLE 94 –

For paragraph (2) substitute the following paragraph –

- “(2) Those Regulations may –
- (a) require that advertisements, labels, receipts, or other things, that are or include expressions or indications of retail prices for goods or services supplied shall make separate mention of, and prominently display, the amount of the price that consists of GST; and
 - (b) specify the circumstances in which advertisements, labels, receipts, or other things, that are or include expressions or indications of retail prices for goods or services supplied shall specify the amount of the price that consists of GST –
 - (i) on each item, or
 - (ii) on the cumulative value of all the goods or services supplied at the same time to a person.”.

DEPUTY A. BRECKON OF ST. SAVIOUR

REPORT

At Article 94 at (2) the present proposal is that –

“a retail price be expressed or indicated as a global price that includes GST without separate mention of GST.”

That is to say you will not see – no transparency – regarding the rate or amount of GST. I think this has a number of implications that have not been properly thought through or evaluated.

Inflationary

On the very many low price items especially under £1, also above in pence that do not readily increase by 3% there would need to be a “rounding” if prices are to be inclusive of GST.

General guidance is clear if this equates to 0.5 pence items should be marked-up – if it is 0.4 pence or less it should be marked down (both to the nearest pence). Consumers have no comfort (or transparency) that this will happen – who will check? What is the sanction for those that cheat?

Example

An item costing 50 pence at present: increase by 3% = 51.5 pence. Rounding = 52 pence.

If 10 items are bought the cost will be £5.20 pence.

If, as my amendment seeks to do the GST can be added to the total, the following would happen –

$$\begin{array}{rcl} 10 \times 50 & = & 5.00 \\ + 3\% & = & \underline{.15} \\ & & 5.15 \end{array}$$

In terms of price increase the GST inclusive price is 33% higher, although only 20 pence against 15 pence.

I believe the cumulative effect is considerable and will translate to real price increases of between 5 and 10% on many low cost items.

My amendment seeks to show that:

The presence of GST at the appropriate rate will have to be prominently displayed and may need to be itemised, both separately and for individual items and for collective purchases.

The object of this amendment is to give transparent pricing options in regard to GST.

Larger supermarkets in Jersey carry about 14,000 items and the re-pricing of some items is not just a “one-off” they would need to keep doing it. Many items now carry a ‘price-flash’ or price indicator – this would need to be regularly changed week in and week out.

My proposal is to allow retail outlets to add up the purchases and add GST at the point of purchase.

Informing Consumers

Retailers would need to prominently display the fact that GST would be added to prices on display and also what the rate is – proposed 3% but not fixed forever.

Future implications

When the rate of GST is increased which it inevitably will be (!) the only factors that retailers would need to adjust is that at the point of sale and the display – advertising.

Crocodile Tears

The Economic Development and Treasury and Resources Ministers are laying claim to wishing to “protect consumers” and prevent them from being confused or even lead (in) to potential abuse.

I really have to question this as I suspect the real motive it to “bury” the GST in an inclusive price so no-one can blame the Government but look to the “greedy retailers” to justify their actions.

A very cunning diversion if accepted!

No real consumer protection

If Ministers are serious about real consumer protection there is much they can do as Jersey is well behind the developed world.

Attachments

(A) Directive 98/6/EC of the European Parliament and of the Council of 16th February 1998.

I would draw attention to Articles (1), (2) and (10).

(B) 2004 No. 102. Prices

“The Price Marking Order 2004” (UK Parliament)

(C) Appraisal of Directive 98/6/EC on consumer protection in the indication of unit prices of products offered to consumers.

Members can see from attachments that matters need a wider view and not merely focussed upon a narrow view and opinion. This especially effects on small businesses and in particular the Sole Trader, Corner Shops etc.

Low Income and GST

I believe the examples I have shown of the inflationary adjustment and effect will lead to those on low incomes suffering as a consequence of GST being made inclusive in individual prices.

Flexibility is required which is what my amendment seeks to achieve.

Financial/manpower implications from this Amendment

I believe that there are significant benefits in terms of easier administration for the public sector and significant benefits for retailers in terms of less bureaucracy and transparency for consumers.

I believe hidden financial benefits could accrue from transparency of pricing that will clearly show G.S.T. – hidden charges and those on individual low price items could be inflationary.

Amendments to

Articles 31 and 32

Refer to Protocol 3 with the European Community and are consequential to ensure no discrimination of goods or services sourced in Jersey.

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

Official Journal L 080, 18/03/1998 P. 0027 – 0031

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 129a(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 9 December 1997,

- (1) Whereas transparent operation of the market and correct information is of benefit to consumer protection and healthy competition between enterprises and products;
- (2) Whereas consumers must be guaranteed a high level of protection; whereas 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;
- (3) Whereas the Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy ⁽⁴⁾ and the Council Resolution of 19 May 1981 on a second programme of the European Economic Community for a consumer protection and information policy ⁽⁵⁾ provide for the establishment of common principles for indicating prices;
- (4) Whereas these principles have been established by Directive 79/581/EEC concerning the indication of prices of certain foodstuffs ⁽⁶⁾ and Directive 88/314/EEC concerning the indication of prices of non-food products ⁽⁷⁾;
- (5) Whereas the link between indication of the unit price of products and their pre-packaging in pre-established quantities or capacities corresponding to the values of the ranges adopted at Community level has proved overly complex to apply; whereas it is thus necessary to abandon this link in favour of a new simplified mechanism and in the interest of the consumer, without prejudice to the rules governing packaging standardisation;
- (6) Whereas 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;

- (7) Whereas, therefore, there should be a general obligation to indicate both the selling price and the unit price for all products except for products sold in bulk, where the selling price cannot be determined until the consumer indicates how much of the product is required;
- (8) Whereas it is necessary to take into account the fact that certain products are customarily sold in quantities different from one kilogramme, one litre, one metre, one square metre or one cubic metre; whereas it is thus appropriate to allow Member States to authorise that the unit price refer to a different single unit of quantity, taking into account the nature of the product and the quantities in which it is customarily sold in the Member State concerned;
- (9) Whereas the obligation to indicate the unit price may entail an excessive burden for certain small retail businesses under certain circumstances; whereas Member States should therefore be allowed to refrain from applying this obligation during an appropriate transitional period;
- (10) Whereas Member States should also remain free to waive the obligation to indicate the unit price in the case of products for which such price indication would not be useful or would be liable to cause confusion for instance when indication of the quantity is not relevant for price comparison purposes, or when different products are marketed in the same packaging;
- (11) Whereas in the case of non-food products, Member States, with a view to facilitating application of the mechanism implemented, are free to draw up a list of products or categories of products for which the obligation to indicate the unit price remains applicable;
- (12) Whereas Community-level rules can ensure homogenous and transparent information that will benefit all consumers in the context of the internal market; whereas the new, simplified approach is both necessary and sufficient to achieve this objective;
- (13) Whereas Member States must make sure that the system is effective; whereas the transparency of the system should also be maintained when the euro is introduced; whereas, to that end, the maximum number of prices to be indicated should be limited;
- (14) Whereas particular attention should be paid to small retail businesses; whereas, to this end, the Commission should, in its report on the application of this Directive to be presented no later than three years after the date referred to in Article 11(1), take particular account of the experience gleaned in the application of the Directive by small retail businesses, inter alia, regarding technological developments and the introduction of the single currency; whereas this report, having regard to the transitional period referred to in Article 6, should be accompanied by a proposal,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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.

Article 2

For the purposes of this Directive:

- (a) selling price shall mean the final price for a unit of the product, or a given quantity of the product, including VAT and all other taxes;
- (b) unit price shall mean the final price, including VAT and all other taxes, for one kilogramme, one litre, one metre, one square metre or one cubic metre of the product or a different single unit of quantity which is widely and customarily used in the Member State concerned in the marketing of specific products;
- (c) products sold in bulk shall mean products which are not pre-packaged and are measured in the presence of the consumer;
- (d) trader shall mean any natural or legal person who sells or offers for sale products which fall within his commercial or professional activity;
- (e) consumer shall mean any natural person who buys a product for purposes that do not fall within the sphere of his commercial or professional activity.

Article 3

1. The selling price and the unit price shall be indicated for all products referred to in Article 1, the indication of the unit price being subject to the provisions of Article 5. The unit price need not be indicated if it is identical to the sales price.
2. Member States may decide not to apply paragraph 1 to:
 - products supplied in the course of the provision of a service,
 - sales by auction and sales of works of art and antiques.
3. For products sold in bulk, only the unit price must be indicated.
4. Any advertisement which mentions the selling price of products referred to in Article 1 shall also indicate the unit price subject to Article 5.

Article 4

1. The selling price and the unit price must be unambiguous, easily identifiable and clearly legible. Member States may provide that the maximum number of prices to be indicated be limited.
2. The unit price shall refer to a quantity declared in accordance with national and Community provisions.

Where national or Community provisions require the indication of the net weight and the net drained weight for certain pre-packed products, it shall be sufficient to indicate the unit price of the net drained weight.

Article 5

1. Member States may waive the obligation to indicate the unit price of products for which such indication would not be useful because of the products' nature or purpose or would be liable to create confusion.

2. With a view to implementing paragraph 1, Member States may, in the case of non-food products, establish a list of the products or product categories to which the obligation to indicate the unit price shall remain applicable.

Article 6

If the obligation to indicate the unit price were to constitute an excessive burden for certain small retail businesses because of the number of products on sale, the sales area, the nature of the place of sale, specific conditions of sale where the product is not directly accessible for the consumer or certain forms of business, such as certain types of itinerant trade, Member States may, for a transitional period following the date referred to in Article 11 (1), provide that the obligation to indicate the unit price of products other than those sold in bulk, which are sold in the said businesses, shall not apply, subject to Article 12.

Article 7

Member States shall provide appropriate measures to inform all persons concerned of the national law transposing this Directive.

Article 8

Member States shall lay down penalties for infringements of national provisions adopted in application of this Directive, and shall take all necessary measures to ensure that these are enforced. These penalties must be effective, proportionate and dissuasive.

Article 9

1. The transition period of nine years referred to in Article 1 of Directive 95/58/EC of the European Parliament and of the Council of 29 November 1995 amending Directive 79/581/EEC on consumer protection in the indication of the prices of foodstuffs and Directive 88/314/EEC on consumer protection in the indication of the prices of non-food products ⁽⁸⁾ shall be extended until the date referred to in Article 11(1) of this Directive.

2. Directives 79/581/EEC and 88/314/EEC shall be repealed with effect from the date referred to in Article 11(1) of this Directive.

Article 10

This Directive shall not prevent Member States from adopting or maintaining provisions which are more favourable as regards consumer information and comparison of prices, without prejudice to their obligations under the Treaty.

Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 March 2000. They shall forthwith inform the Commission thereof. The provisions adopted shall be applicable as of that date.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be

accompanied by such reference at the time of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

3. Member States shall communicate the provisions governing the penalties provided for in Article 8, and any later amendments thereto.

Article 12

The Commission shall, not later than three years after the date referred to in Article 11(1), submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular on the application of Article 6, accompanied by a proposal.

The European Parliament and the Council shall, on this basis, re-examine the provisions of Article 6 and shall act, in accordance with the Treaty, within three years of the presentation by the Commission of the proposal referred to in the first paragraph.

Article 13

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 16 February 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J. CUNNINGHAM

(1) OJ C 260, 5. 10. 1995, p. 5 and OJ C 249, 27. 8. 1996, p. 2.

(2) OJ C 82, 19. 3. 1996, p. 32.

(3) Opinion of the European Parliament of 18 April 1996 (OJ C 141, 13. 5. 1996, p. 191). Council Common Position of 27 September 1996 (OJ C 333, 7. 11. 1996, p. 7) and Decision of the European Parliament of 18 February 1997 (OJ C 85, 17. 3. 1997, p. 26). Decision of the European Parliament of 16 December 1997 and Decision of the Council of 18 December 1997.

(4) OJ C 92, 25. 4. 1975, p. 1.

(5) OJ C 133, 3. 6. 1981, p. 1.

- (6) OJ L 158, 26. 6. 1979, p. 19. Directive as last amended by Directive 95/58/EC (OJ L 299, 12. 12. 1995, p. 11).
- (7) OJ L 142, 9. 6. 1988, p. 19. Directive as last amended by Directive 95/58/EC (OJ L 299, 12. 12. 1995, p. 11).
- (8) OJ L 299, 12. 12. 1995, p. 11.

Commission Declaration

Article 2(b):

The Commission takes the view that the expression ‘for one kilogramme, one litre, one metre, one square metre or cubic metre of the product or a different single unit of quantity’ in Article 2(b) also applies to products sold by individual item or singly.

Commission Declaration

Article 12, first paragraph:

The Commission considers that Article 12, first paragraph, of the Directive cannot be construed as calling into question its right of initiative.

 STATUTORY INSTRUMENTS

2004 No. 102

PRICES

The Price Marking Order 2004

<i>Made - - - - -</i>	<i>19th January 2004</i>
<i>Laid before Parliament</i>	<i>21st January 2004</i>
<i>Coming into force - -</i>	<i>22nd July 2004</i>

Whereas the Secretary of State, in accordance with section 2(6) of the Prices Act 1974(a) as applied by section 4(3) of that Act has consulted in such a manner as appeared to her to be appropriate having regard to the subject-matter and urgency of this Order, with such organisations representative of interests substantially affected by this Order as appeared to her, having regard to those matters, to be appropriate;

Now, therefore, the Secretary of State, in exercise of the powers under section 4 of the said Act, hereby makes the following Order—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Price Marking Order 2004 and shall come into force on 22nd July 2004.

(2) In this Order—

“advertisement” means any form of advertisement which is made in order to promote the sale of a product but does not include any advertisement by means of which the trader intends to encourage a consumer to enter into a distance contract, a catalogue, a price list, a container or a label;

“consumer” means any individual who buys a product for purposes that do not fall within the sphere of his commercial or professional activity;

“cosmetic products” means any substance or preparation intended to be placed in contact with an external part of the human body, or with the teeth, inside of the mouth or throat with a view exclusively or mainly to one or more of the following purposes: cleaning, perfuming, changing the appearance of, protecting, and keeping in good condition it or them or correcting body odour;

“distance contract” means any contract concerning products concluded between a trader and a consumer, by any means, without the simultaneous physical presence of the trader and the consumer;

“itinerant trader” means any trader who, as a pedestrian, or from a train, aircraft, vessel, vehicle, stall, barrow, or other mobile sales unit, offers products to consumers other than by means of pre-printed material;

“liquid medium” has the meaning given for the purposes of paragraph 4 of Article 8 of Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs(b);

(a) 1974 c. 24. Section 4 was amended by section 16 of the Price Commission Act 1977 (c. 33).

(b) OJ No. L109, 6.5.2000, p. 29.

“make-up products” means cosmetic products solely intended temporarily to change the appearance of the face or nails, including (but not limited to) lipsticks, mascaras, eye shadows, blushers and concealers;

“net drained weight” means the weight of a solid food product when it is presented in a liquid medium;

“precious metal” means gold, silver or platinum, or any other metal to which by an order under section 17 of the Hallmarking Act 1973(a) the provisions of that Act are applied;

“products sold from bulk” means products which are not pre-packaged and are weighed or measured at the request of the consumer;

“relevant floor area” in relation to a shop means the internal floor area of the shop excluding any area not used for the retail sale of products or for the display of such products for retail sale;

“selling price” means the final price for a unit of a product, or a given quantity of a product, including VAT and all other taxes;

“shop” includes a store, kiosk and a franchise or concession within a shop;

“small shop” means any shop which has a “relevant floor area” not exceeding 280 square metres;

“standard of fineness” means any one of the standards of fineness specified in column (2) of paragraph 2 of Schedule 2 to the Hallmarking Act 1973;

“trader” means any person who sells or offers or exposes for sale products which fall within his commercial or professional activity;

“unit price” means the final price, including VAT and all other taxes, for one kilogram, one litre, one metre, one square metre or one cubic metre of a product, except (i) in respect of the products specified in Schedule 1, where unit price means the final price including VAT and all other taxes for the corresponding units of quantity set out in that Schedule; and (ii) in respect of products sold by number, where unit price means the final price including VAT and all other taxes for an individual item of the product.

Revocation

2. The Price Marking Order 1999(b) is hereby revoked.

Scope of application of the Order

- 3.—(1) This Order shall not apply:

- (a) to products which are supplied in the course of the provision of a service; or
- (b) to sales by auction or sales of works of art or antiques.

- (2) The Electronic Commerce (EC Directive) Regulations 2002(c) shall apply to this Order notwithstanding Regulation 3(2) of those Regulations.

Obligation to indicate selling price

4.—(1) Subject to paragraph (2) and articles 9 and 10, where a trader indicates that any product is or may be for sale to a consumer, he shall indicate the selling price of that product in accordance with the provisions of this Order.

- (2) The requirement in paragraph (1) above shall not apply in respect of:

- (a) products sold from bulk; or
- (b) an advertisement for a product.

Obligation to indicate unit price

5.—(1) Subject to paragraph (2), (3) and (4) and article 9, where a trader indicates that any product is or may be for sale to a consumer, he shall indicate the unit price of that product in accordance with the provisions of this Order.

(a) 1973 c. 43.

(b) S.I. 1999/3042.

(c) S.I. 2002/2013.

(2) The requirement in paragraph (1) only applies in respect of products sold from bulk or required by or under Parts IV or V of the Weights and Measures Act 1985(a) to be:

- (a) marked with an indication of quantity; or
- (b) made up in a quantity prescribed by or under that Act.

(3) The requirement in paragraph (1) shall not apply in relation to:

- (a) any product which falls within Schedule 2;
- (b) any product the unit price of which is identical to its selling price;
- (c) bread made up in a prescribed quantity which is or may be for sale in a small shop, by an itinerant trader or from a vending machine; or
- (d) any product which is pre-packaged in a constant quantity which is or may be for sale in a small shop, by an itinerant trader or from a vending machine.

(4) The requirement in paragraph (1) applies in relation to an advertisement for a product only where the selling price of the product is indicated in the advertisement.

Manner of indication of selling price and unit price

6.—(1) The indication of selling price and unit price shall be in sterling.

(2) If a trader indicates his willingness to accept foreign currency in payment for a product, he shall, in addition to the required price indications in sterling:

- (a) give an indication of the selling price and any unit price required for the product in the foreign currency in question together with any commission to be charged; or
- (b) clearly identify the conversion rate on the basis of which the foreign currency price will be calculated together with any commission to be charged; and

indicate that such selling price, unit price or conversion rate as the case may be does not apply to transactions via a payment card to be applied to accounts denominated in currencies other than sterling, the conversion rate for which will be that applied by the relevant payment scheme which processes the transaction.

7.—(1) An indication of selling price, unit price, commission, conversion rate or a change in the rate or coverage of value added tax given in accordance with article 11 shall be—

- (a) unambiguous, easily identifiable and clearly legible;
- (b) subject to paragraph 2, given in proximity to:
 - (i) the product; or
 - (ii) in the case of distance contracts and advertisements, a visual or written description of the product; and
- (c) so placed as to be available to consumers without the need for them to seek assistance from the trader or someone on his behalf in order to ascertain it.

(2) Paragraph (1)(b)(i) does not apply to an indication given in relation to any item of jewellery, item of precious metal, or watch displayed in a window of the premises where it is or may be for sale and the selling price of which is in excess of £3,000.

(3) The indication of any charges for postage, package or delivery of a product shall be unambiguous, easily identifiable and clearly legible.

(4) Where, in addition to a unit price, a price per quantity is indicated in relation to a supplementary indication of quantity the unit price shall predominate and the price per supplementary indication of quantity shall be expressed in characters no larger than the unit price.

(5) In paragraph (4) “supplementary indication of quantity” refers to an indication of quantity expressed in a unit of measurement other than a metric unit as authorised by section 8(5A) of the Weights and Measures Act 1985(b).

8. In the case of a pre-packaged solid food product presented in a liquid medium, the unit price shall refer to the net drained weight of the product. Where a unit price is also given with reference to the net weight of the product, it shall be clearly indicated which unit price relates to net drained weight and which to net weight.

(a) 1985 c. 72.

(b) 1985 c. 72. Section 8(5A) was inserted by article 5(2) of S.I. 1994/2867 and amended by article 3(2) of S.I. 2001/55.

(2) The requirement in paragraph (1) only applies in respect of products sold from bulk or required by or under Parts IV or V of the Weights and Measures Act 1985(a) to be:

- (a) marked with an indication of quantity; or
- (b) made up in a quantity prescribed by or under that Act.

(3) The requirement in paragraph (1) shall not apply in relation to:

- (a) any product which falls within Schedule 2;
- (b) any product the unit price of which is identical to its selling price;
- (c) bread made up in a prescribed quantity which is or may be for sale in a small shop, by an itinerant trader or from a vending machine; or
- (d) any product which is pre-packaged in a constant quantity which is or may be for sale in a small shop, by an itinerant trader or from a vending machine.

(4) The requirement in paragraph (1) applies in relation to an advertisement for a product only where the selling price of the product is indicated in the advertisement.

Manner of indication of selling price and unit price

6.—(1) The indication of selling price and unit price shall be in sterling.

(2) If a trader indicates his willingness to accept foreign currency in payment for a product, he shall, in addition to the required price indications in sterling:

- (a) give an indication of the selling price and any unit price required for the product in the foreign currency in question together with any commission to be charged; or
- (b) clearly identify the conversion rate on the basis of which the foreign currency price will be calculated together with any commission to be charged; and

indicate that such selling price, unit price or conversion rate as the case may be does not apply to transactions via a payment card to be applied to accounts denominated in currencies other than sterling, the conversion rate for which will be that applied by the relevant payment scheme which processes the transaction.

7.—(1) An indication of selling price, unit price, commission, conversion rate or a change in the rate or coverage of value added tax given in accordance with article 11 shall be—

- (a) unambiguous, easily identifiable and clearly legible;
- (b) subject to paragraph 2, given in proximity to:
 - (i) the product; or
 - (ii) in the case of distance contracts and advertisements, a visual or written description of the product; and
- (c) so placed as to be available to consumers without the need for them to seek assistance from the trader or someone on his behalf in order to ascertain it.

(2) Paragraph (1)(b)(i) does not apply to an indication given in relation to any item of jewellery, item of precious metal, or watch displayed in a window of the premises where it is or may be for sale and the selling price of which is in excess of £3,000.

(3) The indication of any charges for postage, package or delivery of a product shall be unambiguous, easily identifiable and clearly legible.

(4) Where, in addition to a unit price, a price per quantity is indicated in relation to a supplementary indication of quantity the unit price shall predominate and the price per supplementary indication of quantity shall be expressed in characters no larger than the unit price.

(5) In paragraph (4) “supplementary indication of quantity” refers to an indication of quantity expressed in a unit of measurement other than a metric unit as authorised by section 8(5A) of the Weights and Measures Act 1985(b).

8. In the case of a pre-packaged solid food product presented in a liquid medium, the unit price shall refer to the net drained weight of the product. Where a unit price is also given with reference to the net weight of the product, it shall be clearly indicated which unit price relates to net drained weight and which to net weight.

(a) 1985 c. 72.

(b) 1985 c. 72. Section 8(5A) was inserted by article 5(2) of S.I. 1994/2867 and amended by article 3(2) of S.I. 2001/55.

Special provisions relating to general reductions

9. Where a trader proposes to sell products to which this Order applies at less than the selling price or the unit price previously applicable and indicated in accordance with article 7(1), he may comply with the obligations specified in articles 4(1) (to indicate the selling price) and 5(1) (to indicate the unit price) by indicating by a general notice or any other visible means that the products are or may be for sale at a reduction, provided that the details of the reduction are prominently displayed, unambiguous, easily identifiable and clearly legible.

Special provisions relating to precious metals

10. In the case of products the selling price of which varies from day to day according to the price of the precious metals contained in them the obligation to indicate the selling price referred to in article 4(1) may be complied with by indicating in a manner which is unambiguous, easily identifiable and clearly legible:

- (a) the weight, type and standard of fineness of each precious metal contained in the product; and
 - (b) any element of the selling price which is not referable to weight,
- accompanied by a clearly legible and prominent notice stating the price per unit of weight for the type and standard of fineness of each precious metal contained in the product.

Change in Value Added Tax etc.

11. Where there is a change in the rate or coverage of VAT or any other tax, a trader who adjusts his prices in consequence may comply with the provisions of this Order—

- (a) by means of a general notice or notices for a period of 14 days from the date any such change takes effect, indicating that any products subject to that change are not for sale at the price indicated and that such price will be adjusted to take account of the change; and
- (b) if he continues to distribute any catalogue or sales literature printed or ordered to be printed before a change is announced and there is firmly attached to it a label which prominently states that some or all of the prices printed in it are to be adjusted to reflect the change, and:
 - (i) the label includes sufficient information to enable consumers to establish the adjusted price of any product listed, or
 - (ii) the label refers to and is accompanied by a supplement which enables them to do so.

Decimal places and rounding of unit prices

12. Where the unit price of a product falls below £1 it shall be expressed to the nearest 0.1p. Where the figure denoting one hundredths of one penny in the unit price is 5 or higher, it shall be rounded up and where it is 4 or lower it shall be rounded down.

13. Where the unit price of a product falls above £1 it may be expressed to the nearest:

- (a) 1p, in which case where the figure denoting tenths of one penny in the unit price is 5 or higher, it shall be rounded up and where it is 4 or lower it shall be rounded down; or
- (b) 0.1p, in which case where the figure denoting one hundredths of one penny in the unit price is 5 or higher it shall be rounded up and where it is 4 or lower it shall be rounded down.

Units of Quantity

14. For the purposes of Schedule 1, the figure denoting the relevant units of quantity in the second column of the table for the corresponding product in the first column of the table refers, as indicated by or under the Weights and Measures Act 1985(a), and unless specified otherwise to:

- (a) grams where the product is sold by weight;
- (b) millilitres where the product is sold by volume; and

(a) 1985 c. 72.

- (c) either grams or millilitres, as indicated by the manufacturer of the product, where the product is permitted to be sold by either weight or volume.

Enforcement

15. For the purpose of ascertaining whether any trader enjoys exemption from unit pricing under article 5(3)(c) or (d) in respect of a small shop, a local weights and measures authority may require that trader to produce such documentary evidence relating to the shop in question as it considers necessary.

19th January 2004

Gery Sutcliffe,
Parliamentary under Secretary of State for
Employment Relations, Competition and Consumers,
Department of Trade and Industry

RELEVANT UNITS OF QUANTITY FOR SPECIFIED PRODUCTS FOR THE
PURPOSE OF THE DEFINITION OF "UNIT PRICE"

<i>Product</i>	<i>Units of Quantity</i>
Flavouring essences	10
Food colourings	10
Herbs	10
Make-up Products	10 (except where sold by number)
Seeds other than pea, bean, grass and wild bird seeds	10
Spices	10
Biscuits and shortbread	100 (except where sold by number)
Bread	100 (except where sold by number)
Breakfast cereal products	100 (except where required to be quantity marked by number)
Chocolate confectionery and sugar confectionery	100
Coffee	100
Cooked or ready-to-eat fish, seafoods and crustacea	100
Cooked or ready-to-eat meat including game and poultry	100
Cosmetic products other than make-up products	100
Cream and non-dairy alternatives to cream	100
Dips and spreads excluding edible fats	100
Dry sauce mixes	100
Fresh processed salad	100
Fruit juices, soft drinks	100
Handrolling and pipe tobacco	100
Ice cream and frozen desserts	100
Lubricating oils other than oils for internal combustion engines	100
Pickles	100
Pies, pasties, sausage rolls, puddings and flans indicating net quantity	100 (except where sold by number)
Potato crisps and similar products commonly known as snack foods	100
Preserves including honey	100
Ready to eat desserts	100
Sauces, edible oils	100
Soups	100
Tea and other beverages prepared with liquid	100
Waters, including spa waters and aerated waters	100
Wines, sparkling wine, liqueur wine, fortified wine	75 cl
Coal, where sold by the kilogram	50 kg
Ballast, where sold by the kilogram	1,000 kg

PRODUCTS IN RESPECT OF WHICH A TRADER IS EXEMPT FROM THE REQUIREMENT TO UNIT PRICE

1. Any product which is offered by traders to consumers by means of an advertisement which is
 - (a) purely aural;
 - (b) broadcast on television;
 - (c) shown at a cinema; or
 - (d) inside a small shop.
2. Any product the price of which has been reduced from the usual price at which it is sold, on account of:
 - (a) its damaged condition; or
 - (b) the danger of its deterioration.
3. Any product which comprises an assortment of different items sold in a single package.
4. Any product the unit price of which is 0.0p as a result of article 12 (Decimal places and rounding of unit prices) of this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements Directive 98/6/EC of the European Parliament and of the Council (OJ No. L180, 18.3.98 p. 27) on consumer protection in the indication of prices of products offered to consumers. It revokes the Price Marking Order 1999 (S.I. 1999 No. 3042) which previously implemented the Directive.

Article 4 requires traders to indicate the selling prices of all products offered for sale to consumers except those offered in the course of the provision of a service, those sold by auction, works of art or antiques (article 3(1)) and products sold from bulk. Article 1 defines the selling price as the final price including VAT and other taxes.

Article 3(2) applies to this Order the requirements of the Electronic Commerce (EC Directive) Regulations 2002 (S.I. 2002 No. 2013).

Article 5 requires, with exceptions, that the unit price must be indicated for all products sold from bulk and pre-packaged products that are required by or under Parts IV or V of the Weights and Measures Act 1985 to be marked with quantity or to be made up in a prescribed quantity. Article 14 specifies the units of quantity to be used for unit prices of the items listed in Schedule 1 to the Order.

Article 6 requires selling and unit prices to be indicated in sterling but provides for additional indications to be given where a trader indicates that he is willing to accept payment in a foreign currency.

Article 7 requires prices and other indications required under the Order to be given in a clear and unambiguous manner.

The Order includes specific provisions relating to general price reductions (article 9), precious metals the selling price of which varies from day to day (article 10), and changes in VAT or other taxes which cause adjustments in prices (article 11).

A regulatory impact assessment and a Transposition Note in relation to these Regulations have been prepared and are available from the Consumer and Competition Policy Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET or at www.dti.gov.uk/ccp/. Copies of both these documents have also been placed in the libraries of both Houses of Parliament.



**Appraisal of Directive 98/6/EC on
consumer protection in the
indication of unit prices of products
offered to consumers**

Final report

Mrs. Jacqueline Snijders (contact person)
Mr. Micha van Lin
Ms. Jolanda Hessels

Zoetermeer, August, 2004



7 Conclusions

7.1 Main findings

This Study has set out to appraise the use and impact of Directive 98/6/EC OJ No 80, 18.3.1998 p. 27, on consumer protection by the indication of unit prices of products offered to consumers. In the Directive, an appraisal of the application of the Directive by the Member States is foreseen in Article 12. This Study, which is confined to the pre 1 May 2004 fifteen Member States, forms part of this appraisal foreseen in the Directive. Below, an overview of the main findings and conclusions are provided.

Background information

The *European retail sector* is marked by a large number of small retailers. However, large retail business (more than 250 employees) account for 40% of turnover and have extensive bargaining power. Large enterprises have extended their market share and further concentration is expected in the future. Consumers tend to increasingly buy their daily groceries in one trip in order to save time. The availability of a large number of cheap products is key in this process, available through effort and flexible large retailers and shops. It seems that small retailers will only survive in niche and local markets.

Implementation of the Directive

All fifteen Member States indicate that the *Directive has been implemented without major problems*. However, the majority of Member States did not implement the Directive on time (i.e. by 18 March 2000) and transposition was only completed in all Member States in March 2003. For most Member States the implementation of the Directive was mainly a continuation of past policies. The Directive was a simplification of the previous price indication systems and provides consumers with possibilities to evaluate and compare prices of products. Despite the general satisfaction with implementation, disagreement between the consumer and retail stakeholders on some specific issues (such as the exemption for small retailers, extension of the legislation to the service sector and the presumed positive effects for consumers) remains.

Exemptions under Article 3.2

Article 3.2 gives Member States the ability to exempt 'products supplied in the course of the provision of a service' and 'sales by auction and sales of works of art and antiques'. Almost every country makes use of the possibility to exempt one of these categories; some countries make full use of the available exemptions (AT, DK, EL, ES, IE, NL, PT, UK).

The use of the exemption-possibilities of Article 3.2 was sometimes a continuation of past policy (DK, PT). Some countries (AT, NL) have a policy of making maximum use of the exemption-possibilities given in the Directive and for them it was logical to make full use of the possibilities offered in Article 3.2. Reasons advanced by the various stakeholders for exempting these products are that unit pricing would be difficult or nearly impossible; would not be relevant since these goods are not sold frequently; and there is no perceived benefit, or practical purpose, in unit pricing these products.

Most Member States do not intend or expect future changes with respect to the use or non-use of exemptions under Article 3.2.

In general, there is no need to exempt additional specific sectors in the same way as 'sales by auction and sales of works of art and antiques'. Only Portugal has requested that a range of expensive consumer products within the jewellery/clock-making sector should be exempted as is the case of works-of-art and antiques.

Extension to services

Although this was outside the scope of the Study, some information on the possibility of extending unit pricing to services has been collected. The definition of what would constitute a *unit* of service leads to much confusion and debate amongst stakeholders. In many Member States there has so far been little or no discussion about extension of the legislation on unit pricing to services (Belgium, The Netherlands, Germany, Greece, Spain, Ireland, Italy, United Kingdom, Austria). However, three Member States have already introduced legislation on unit pricing for services or are planning to introduce this kind of legislation (Portugal, Luxembourg, Sweden). A survey from the European Commission shows that European consumers favour competition, but want guarantees on services of general interest. Price is consumers' main source of dissatisfaction. Consumers want clearer information on tariffs and prices, especially to enable them to compare prices. While it may be unclear, on the basis of current research as to what extent *unit* pricing would provide this price transparency *it is recommended that the question of extending unit pricing to services be kept under review.*

Extent of introduced limitations (Article 4.1)

Article 4.1 states 'The selling price and the unit price must be unambiguous, easily identifiable and clearly legible'. Most Member States have enacted more stringent provisions to improve consumer information (e.g. promotional offers, ways of displaying information, extra costs). For the EU as a whole, small retailers are positive about the visibility of the unit price as 65% agree that the print of the unit price is generally large enough to be easily read.

Article 4.1 also provides Member States with the possibility of limiting the number of prices indicated. With respect to limiting the maximum number of prices different groups of Member States can be identified:

- Member States for which the transposition legislation does not mention the option of limiting the number of prices (BE, FI, SE);
- Member States that did not introduce limitations (AT, DE, DK, EL, ES, NL, PT, UK, IE);
- Member States that introduced limitations during the transition period (FR, IT, LU).

From a consumer perspective it is legitimate to limit the number of prices indicated. Too many prices can be misleading to consumers and therefore do not contribute to readability. On the other hand, there should be as much information as possible and therefore the possibility of exemptions of products should be limited. A number of Member States and consumer organisations are of the opinion that maximum information provides maximum protection.

A common regulation at European level is not necessary, especially regarding the size of the price indication. A number of Member States already have applied more stringent measures in their national legislation. The option of limiting the number of maximum prices would still be relevant for new or non-euro Member States that may introduce the euro in the future.

Products for which the obligation is waived, Article 5

Article 5.1 provides each Member States with the possibility to identify negative product lists i.e. those that are exempt from unit pricing. Article 5.2 allows Member States to establish positive lists for non-food products i.e. those that need to be unit priced. Lists with exemptions (negative list or positive lists) are intended to clarify the definition already included in the Directive that unit pricing should not lead to confusion. The transposition has led to different approaches and lists of products. This may constitute an obstacle to improving consumer information, particularly in connection with cross-border shopping. The lists often used are a result of previously used lists. Not much discussion has taken place on which products should, or should not, be included in the lists. The lists include in general the same products. However, some specific national products are included.

With respect to Article 5 the following approaches were adopted by Member States:

- A first group of Member States has adopted only negative lists for food- and non-food products for which the requirement to indicate unit price does not apply (BE, DK, EL, ES, IE, IT, NL, PT);

- A second group has adopted negative lists for food products as above, but in addition positive lists for non-food products for which the requirement to indicate the unit price remains applicable (AT, LU, UK);
- One country has adopted negative lists for food products and both negative and positive lists for non-food products (FI);
- One country has adopted only positive lists for food and non-food products (FR);
- Finally, two countries have no lists at all (DE, SE).

The main reason for exempting identified food and non-food products is based on the reasoning contained in Article 5, i.e. that unit pricing would not be useful or would be liable to create confusion. Other additional motives for exempting products were that unit pricing would be unworkable or impossible for these products and that products are sold for direct consumption (e.g. individual ice-creams). Products are sometimes exempted because of a specific national peculiarity or tradition.

National experts indicated that the exempted products only represent a low percentage of the total number of products. There are, however, no reliable statistics on this matter.

Member States do not seek any changes with respect to Article 5. The flexibility of the current Directive is highly valued, as it allows individual Member States to exempt products in line with specific national circumstances. A similar measure for all Member States (e.g. by identifying products in more detail in the Directive which would uniformly apply to all Member States) is regarded as unnecessary and difficult to apply, e.g. because of differences in national characteristics.

Article 6 - derogation for small retail business

The Directive provides a derogation (Article 6) that allows Member States to exempt small retail business from the obligation to indicate the unit price. Eight Member States (AT, DE, EL, FR¹, IE, LU, NL, UK) use the derogation. A number of Member States (BE, ES, IT, PT) initially made use of the derogation (when the Directive was introduced), but they abolished it once the transitional period for introducing the euro was over. The Nordic countries DK, FI and SE have never made use of the derogation.

¹ France makes no formal use of the derogation; an administrative tolerance is in place, which allows small retail business to be exempted from the obligation to indicate the unit price.

Most Member States do not foresee any changes in their current policy. Those that currently use the derogation intend to maintain it. Almost every Member State that used the derogation in the past, but abolished it, does not intend to re-introduce the derogation. Only Belgium is considering re-introducing the derogation for sales areas of no more than 150-200 m².

The use of the derogation is justified both from a business perspective (administrative burdens, investments in time, costs) and/or from a consumer perspective (price and price per unit is not an important sales criteria for consumers that buy items in the exempted shops; rather other factors -e.g. price, appearance, brand, taste, quality, packaging- are important buying criteria; and small retail shops only have a limited number of products making price comparison less relevant). The belief is that for the small retailer it would be a heavy burden to abide by the obligation, while the advantages for the consumer would be minimal. Alternative viewpoints are also stated that consumers in small shops that do not apply unit pricing are disadvantaged.

The motivation not to use the derogation (Article 6) is that to do so leads to a more simple and transparent legislation, which is in the interest of consumers. There is also a view that if the Directive is, as claimed, intended as a benefit to consumers, then there is no logic in denying customers information simply because they are in a small shop.

An important reason in favour of the derogation however is the social role of small retail shops and when they are located in rural areas. In view of their ongoing decline, these shops should not be unnecessarily burdened. The relationship of trust between a local small retailer and the consumer provides sufficient safeguard for a fair and clear price information.

In Austria and the United Kingdom, Member States that use the derogation, conflicting views exist about the usefulness of the derogation. In Austria, retailer organisations consider the derogation for small business to be very useful and opt for maintaining this exception. Consumers, by contrast, think the derogation is unhelpful. They would prefer more standardised and uniform pricing policies. This also applies to pricing among different countries and in particular where this could pose a problem for consumers living in border regions. In the United Kingdom it is the view of some stakeholders that the derogation is not simply considered useful, but for reasons of competition, sustainability and viability, it is a necessity. There is a view within the retail community however that whilst the derogation is undoubtedly useful to businesses operating entirely from small premises, it is not quite so useful for companies or chains that operate with both small and large shops and therefore make use of same price display systems.

In Spain there are also conflicting views about the usefulness of the transitional period. On the one hand, small retailers believe it was positive and stress that the period itself was long enough to carry out all the adjustments needed. On the other hand, large retailers point out that the adoption of the new regulation among small retailers has not been very widespread, mainly because inspection has concentrated on large retailers. Consumer organisations note that the transitional period may have proven to be less useful than expected since small retailers do not seem to have made use of the period to adapt to the new regulation. Instead, it appears to have been regarded by small retailers as a mere deferment of the actual enforcement date of the new legislation. It is suggested that, for the sake of consumer protection alone, all retailers irrespective of their size, should have been obliged to abide by the law at the same time and pace.

Should the derogation be maintained? If so, permanently or on a temporary basis?

Most Member States that make use of the derogation believe that it should be maintained, mainly because the obligation to indicate unit pricing would mean an additional burden as companies do not have the necessary degree of automation/technological equipment. No request is made for any time-limit to the derogation.

However, in a limited number of cases, from consumers' viewpoint it is argued that the derogation should be abolished (AT, BE), because this would ensure better comparability of prices. An alternative view is that consumers make a decision to go to smaller shops not on the basis of transparency of the price indication, but for reasons of proximity, accessibility etc. and that therefore the derogation should be maintained.

Some countries are of the opinion that a derogation for small retail business is not relevant (anymore) and should, therefore, be deleted from the Directive (PT, FI).

The derogation for small retailers appears to be fair and especially useful for certain smaller retailers. Imposing a requirement to unit price on those establishments could constitute an excessive administrative burden. This view is shared by both (most) consumer and retail organisations. However, some consumer organisations oppose the relatively long period of exemption for small retailers and are not in favour of a permanent exemption. The majority of opinion supports the maintenance of the derogation in its current form, for the time being. Nevertheless, the question of the value of the derogation should be kept under review.

Definitions of small retail business

Member States that make use, or made use, of the derogation in the past have applied various definitions for small retail business. In seven Member States (AT, BE, EL, FR, IT, LU, UK) small retail business is defined on the basis of the sales area; in two Member States (AT, NL) a definition based on the level of employment applies. In Ireland access to technology is the qualifying criterion, which means that (small) retailers are only exempt when they do not have the appropriate equipment for printing shelf edge labels or scanning products.

The existing flexibility of the Directive which allows individual Member States to apply their own definitions of small retail business is highly valued by most stakeholders. Because of the specific national characteristics of the retail trade, a common European definition for *small* retailers seems to be impractical. A uniform definition might be advantageous for retailers and consumers that operate across national borders or that are located in border regions. It is argued by some consumer organisations that the current lack of a common definition might lead to a situation in which the concept of 'small' is expanded to encompass enterprises that do have the capacities to indicate the unit price. All stakeholders agree that only the smaller retail businesses, for which unit pricing would indeed pose an excessive burden, should be exempted.

However, the appropriate precise definition of 'small' remains unclear. A definition based on sales area has the advantage of being based on a fixed criterion as compared to a definition based on the number of employees, which is a more variable factor. A definition based on the number of people employed has the advantage of being used as a criterion to distinguish enterprises according to size class in other information sources (e.g. databases, statistical information).

A common definition of small retailers is not absolutely necessary. It should be the case however that only the smaller retail businesses for which unit pricing poses a real burden are exempted by the Directive.

Compliance with the Directive

Although not specifically asked for, a number of countries reported that the monitoring of unit pricing in small retail shops does not seem to be very active. Studies in Belgium and Spain reveal that a large proportion of the indicated unit prices in larger retail stores was not correct. These mistakes in indicating the unit price could lead to even more confusion for consumers. The Survey reveals, however, that there is in general good compliance with the obligations of the Directive as it appears that most enterprises that are obliged by law to indicate the unit price actually do indicate the unit price.

General impact of the Directive

So far no formal evaluation of the Directive has been carried out in Member States. Most Member States consider that the Directive has not been implemented long enough to warrant a full-scale evaluation of the impact. However, previous price indication legislation has been assessed in a few Member States. In implementing the Directive, most Member States have conducted public consultations seeking input from various stakeholders.

The aim of the Directive is to ensure information for consumers through the promotion of price transparency in order to encourage competition amongst goods offered to consumers. The Directive meets this objective. An extension of the obligation to indicate the unit price automatically leads to improved price transparency. However, it still remains to be seen to what extent the Directive leads to an overall improvement in consumer protection.

Impact on small retailers

Three important reasons for exempting small retailers are:

- The pricing methods used by small retailers make unit pricing very cumbersome;
- Technological developments would make unit pricing easier for small retailers; (Anticipated technological developments were a reason for a temporary derogation in the current Directive.)
- Due to their size and the pricing methods used, unit pricing would constitute an excessive administrative burden on small retailers.

The research has shown that despite technological developments in the retail sector, the classic distinction between the pricing methods applied by (very) small retailers and larger retailers remains. Smaller enterprises use price guns or handwritten labels, compared to computerised systems by larger enterprises. Small retailers label prices on individual items, whereas large retailers indicate the selling and the unit price on the shelf. In general, small retailers calculate the prices themselves on the basis of the 'cost carrying capacity' of the product, i.e. an estimation of what the consumer would be willing to pay. *The costs of the new pricing systems available are and will remain prohibitively expensive for small retailers.*

Although for most Member States it was reported that the introduction of unit pricing led to additional labelling and an additional investment in software (e.g. AT, DK, NL, LU, SE), almost no specific information on the extent of this burden is available. In the Survey unit pricing is regarded as an additional burden by a substantial minority (39%) of the retailers (both in terms of additional time, additional personnel costs and additional investments). Since unit pricing forms part of a larger pricing ef-

fort, it is impossible to isolate the additional costs associated with unit pricing. Although the burden on micro retailers (1-2 employees) is larger than on small retailers (6-20 employees) it cannot be determined whether the burden is excessive.

Although there is only limited information available, it is clear that unit pricing is an additional burden for the smallest retailers. This is mainly a result of the pricing methods used by these retailers. Nevertheless, it seems that the 'excessive administrative burden' concern has been addressed effectively by the derogation in Article 6 of the Directive.

Impact on consumers

The Flash Eurobarometer 113 (2001) showed that 68% of European consumers indicate an interest in the display of the unit price. However, different groups in society demonstrate different levels of awareness and use, and the use and helpfulness of unit pricing depends upon the product in question. Consumer awareness of unit pricing differs among various groups of consumers based on gender, age, education, profession and locality type. Women seem to be more interested in the unit price than men. The use of the unit price is thought to rise when the level of education increases. For other consumer characteristics it is not clear what the exact relationship with the use of the unit price is.

There is an acknowledgement that unit pricing may be of use to consumers when switching brands but overall, consumers making familiar choices do not use unit pricing. Four main reasons for not using unit pricing have been identified:

- 1 Consumers lack the cognitive ability to make use of unit pricing;
- 2 The effort required to make comparisons is not considered worthwhile;
- 3 Consumers are not willing to spend time comparing unit pricing;
- 4 Other less-demanding strategies for determining best-value are used.

Consultations with national stakeholders and the results of the survey suggest that there is considerable consumer awareness and use of the unit price. According to the Survey, 59% of small retailers (strongly) agree that consumers use unit prices in their buying choices and behaviour. Only a minority (35%) is of the opinion that consumers do not bother to look at the unit price. The importance of unit pricing for consumers is widely acknowledged among small retailers. Possible negative side effects of unit pricing (the sense that its indication creates confusion for consumers and results in an information overload) are recognized only by a minority of small retailers.

The results of the Survey show that opinions are divided over the question of whether the unit price is of special importance to persons that are restricted to a specific area (such as older people or people with disabilities). About half (51%) of small retailers acknowledge special importance for the unit price for this group of people. 43% do not agree with this. About two fifths (40%) of the retailers are of the opinion that the unit price is too difficult to use for older people. Almost half do not agree with this.

On average, small retailers that indicate unit prices are more positive about its use and relevance than retailers that do not display unit prices. One possible explanation is that retailers that do not indicate unit prices have no possibility to actually experience the potential benefits of unit pricing for consumers in their daily business practice. It is also possible that enterprises that currently do not display unit prices are a little more negative about the use and usefulness of unit pricing, because the unit price indication would be of no relevance for their particular products.

It can be concluded that both consumers and retail businesses recognise the usefulness of unit pricing.

To Harmonise or not?

One principal question that needs to be answered before the scope of further harmonization can be discussed is whether unit pricing creates distortions to the internal market. No market distinctions follow from the use of different national measures of transposition in each Member State. In view of the limited amount of cross-border shopping (especially for daily groceries) and the fact that those retailers that operate across borders are generally too large to be exempted in any case, no distortion of the internal market is perceived.

Should exemptions be harmonised across the European Union?

National stakeholders are often divided over the question of whether exemptions should be harmonised across EU Member States. In the minimum harmonisation approach, the exemptions should be sufficiently wide to allow for specific national and cultural differences and particularities. In the maximum harmonisation approach the harmonization should be as strict as possible, allowing for a minimum number of exemptions.

Arguments against the harmonization of exemptions under Article 3.2 point out that harmonization will not be desirable because of existing Member State differences in national markets, cultural habits and trade structures. There does not seem a need to change the existing situation.

The existing Directive provides enough flexibility for the various countries to specify exemptions that apply to specific national circumstances. If harmonization is required, then this should provide the possibility to adapt the provisions to these country-specific situations e.g. with respect to different cultures, different national buying habits and different structures of the national markets. It should also facilitate the accommodation of specific situations that may be quite relevant in some countries and quite negligible in others, as far as consumer protection is concerned.

In contrast, a limited number of exemptions would make for the most transparent system. Arguments in favour of harmonization are that this would create uniformity and that this prevents specific national differences in legislation.

Given both that unit pricing creates no distortions to the internal market and the different characteristics of national markets, cultural habits and trade structures, a further harmonisation of exemptions is not required.

Open Dialogue

In most Member States, the implementation of the Directive has taken place following an open dialogue (or consultation) of the various stakeholders (retailer representatives and consumer organisations with public policy makers). Their participation in the decision making process of formulating the derogation and other exemptions ensures that the policy is supported by the various stakeholders. This facilitates the implementation process. It should also be noted that the implementation of the Directive in most Member States has only occurred very recently. Any changes now to the current manner in which the Directive is transposed would not occur at a reasonable time. No national evaluation studies of the Directive have been conducted, because it is felt that the experience in practice with the new Directive is too limited.

Information to consumers and retailers

In view of the compliance level by retailers and the general use consumers make of unit pricing, more information on the benefits of unit pricing could be provided to consumers and retailers. This would serve to remind both consumers and retailers of the existing legal framework and to remind consumers of the rights they are entitled to when it comes to price indication. Additional information to retailers on the benefits of unit pricing could mitigate part of the existing hesitation over unit pricing and therefore encourage even very small retailers to voluntarily indicate unit prices. The indication of the unit price would not be regarded as a problem by retailers if the added value for consumers is evident. Furthermore, consumers could be encouraged to use unit

pricing by pointing out the benefits to them and explaining how unit pricing should be used in practise.