Clarification of the point in time of price disclosure by way of ordinance

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Key takeaway

The Federal Council has decided to clarify the point in time of price disclosure by amending the Federal Ordinance on the Disclosure of Prices (PDO). Thus, the actual price to be paid (detailed price) must always be disclosed as soon as the purchase offer is displayed. The amendment, which will enter into force on 1 July 2022, runs counter to the previous case law of the Federal Supreme Court, according to which the disclosure of the detailed price shortly before conclusion of the contract was sufficient.

On 25 May 2022, the Federal Council adopted an amendment to the Federal Ordinance on the Disclosure of Prices (PDO) which, among other things, sets out to define at which point in time a price is to be disclosed. Now, the disclosure of the actual price to be paid (detailed price) is to take place at the time and place of the purchase offer. In online business, the detailed price must be disclosed as soon as the purchase offer is displayed. A later disclosure of the price, for example in the order overview at the end of the purchase process, will therefore not be acceptable in future. The amendment to the PDO will come into force on 1 July 2022.

The amendment is intended to create clarity with regard to the point in time of the price disclosure in online business and thus specifies the corresponding practice of the cantonal enforcement authorities and the State Secretariat for Economic Affairs (SECO). At the same time, this amendment opposes the liberal case law of the Federal Supreme Court, which had been developed in recent years on the question of the timing of price disclosure in online business.

- In its ruling 4A_235/2020 of 1 December 2020, the Federal Supreme Court held that, contrary to the practice of SECO, goods and services that were subject to the PDO and were offered for sale through online business did not necessarily have to be provided with the detailed price from the outset; rather, it was sufficient if this price was disclosed to the customer at the latest before the consent was given and thus before the contract was concluded. The Federal Supreme Court reasoned, inter alia, that the PDO does not specify a point in time at which the price must be disclosed (see Legal Update of 20 January 2021).

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- In its ruling 4A_314/2021 of 27 October 2021, the Federal Supreme Court confirmed this practice to the extent that the detailed price must be clearly stated at the end of the ordering process and the customer must be given sufficient time to make a purchase decision (see Legal Update of 10 December 2021).

Defining the point in time of price disclosure by ordinance is in principle a welcome move in light of the legal certainty it aims at.

In summary, it was already recommended under the Federal Supreme Court's deviating case law – for reasons of legal certainty and customer friendliness – to disclose the detailed price of goods and services subject to the PDO at the beginning of the order process. With the forthcoming amendment to the PDO, there is no longer any legal leeway regarding the point in time of price disclosure, which means that the detailed price must always be indicated from the time the purchase offer is displayed.

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No legal or tax advice

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