Message 201

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6. FROM THE DIRECTORATE-GENERAL FOR CONSUMER AFFAIRS REGARDING THE REQUEST FOR ADDITIONAL INFORMATION SUBMITTED BY THE EUROPEAN COMMISSION IN THE CONTEXT OF THE TRIS NOTIFICATION OF THE DRAFT SUSTAINABLE CONSUMPTION BILL

In the framework of the notification procedure established by Directive (EU) 2015/1535, the Spanish authorities notified to the European Commission (notification 2026/294/ES) on 12 June 2026 the ‘Preliminary Draft Bill on Sustainable Consumption’ (hereinafter, the APL).
Following this notification, on 3 July 2026, the Directorate-General for Consumer Affairs received a letter from the European Commission requesting further information (notification 2026/294/ES) regarding the APL.

Accordingly, the additional information requested in notification 2026/294/ES is provided below:

Consumer Protection

‘Fear’ advertising

In light of the principle of full harmonisation under the UCPD, the Commission services wish to clarify whether the unfairness of advertising claims that do not comply with the new requirements of Article 27(2), second subparagraph, regarding the additional information to be provided with such claims, would continue to be assessed on a case-by-case

basis in accordance with Articles 5–9 of the UCPD (i.e. also by assessing the likely impact of the commercial practice on the economic behaviour of the average consumer).

Although, for reasons of legislative consistency, the proposed new rules on commercial communications that use exposure to a risk or danger as the principal means of commercial persuasion are incorporated into the legislation governing unfair commercial practices, the purpose of the measure is not rooted in the rationale or scope of the Unfair Commercial Practices Directive (UCPD). It should be borne in mind that Law 3/1991 of 10 January 1991 on Unfair Competition is not a law transposing the UCPD, but rather contains many additional provisions.

This proposed regulation reflects the legitimate exercise of the powers vested in Member States to protect public health and safeguard individuals' fundamental rights, areas in which European Union law recognises a wide margin of discretion for national authorities. In particular, Article 168 of the Treaty on the Functioning of the European Union assigns to the Member States the responsibility for defining their health policies and adopting the measures necessary to ensure a high level of protection of human health, whilst Article 1 of the Charter of Fundamental Rights of the European Union proclaims the inviolability of human dignity as a founding value of the European legal order. From this perspective, the systematic use of advertising messages that rely on fear, anxiety or the exploitation of states of unease as the primary mechanism of commercial persuasion can have negative effects on people's psychological well-being and on the normal exercise of their individual autonomy, particularly when such techniques are directed at, or are particularly intense in relation to, groups in situations of greater vulnerability, and it is therefore necessary to contextualise such messages so that people can objectively assess the message they receive.

In this context, the regulation does not seek to limit freedom of enterprise or to restrict the dissemination of commercial communications on the grounds of their economic content or the characteristics of the goods or services being promoted, but rather to establish proportionate limits on the use of certain persuasive techniques whose intensity may be incompatible with the protection of human dignity, mental health and the free development of the personality. The measure therefore constitutes a legitimate exercise of state powers to protect general interests of particular constitutional and European significance, whilst fully respecting the principle of proportionality, as it is limited to those advertising practices that exploit fear as an essential element of commercial solicitation; supplementary information must be provided to enable the public to assess the risk properly.

Shrinkflation

The Commission services are asking the Spanish authorities to clarify whether they will apply these measures only to sales in physical shops (subject to Article 5 of the CRD and minimum harmonisation) or whether they also cover distance (online) and off-premises sales, which are subject to Article 6 of the CRD. In the latter case, the Commission'sservices are asking the Spanish authorities to explain whether these additional information requirements are imposed in accordance with the Services Directive 2006/123/EC or the E-Commerce Directive 2000/31/EC, as provided for in Article 6(8) of the CRD.

Articles 5 and 6 of the CRD Directive are transposed, respectively, into Article 60, concerning pre-contractual information in face-to-face sales, and Article 97, concerning pre-contractual information for distance contracts and off-premises contracts, of the consolidated text of the General Law for the Defence of Consumers and Users, approved by Royal Legislative Decree 1/2007 of 16 November 2007 (hereinafter, TRLGDCU).
For its part, Article 20 of the TRLGDCU refers to the necessary information in the commercial offer of goods and services.
In view of the above, it should be noted that the obligations regarding shrinkflation apply to the entire range of goods on offer at the point of sale, affecting the information to be provided and the commercial practices which, in a manner appropriate to the means of communication used, include information on the characteristics of the goods or services and their price, enabling the consumer or user to make a decision regarding the contract, provided that this cannot be clearly inferred from the context.
Consequently, this new proposal for additional consumer information would apply to contracts concluded in physical shops, as well as to distance contracts and those concluded off-premises.
In relation to online commerce, the proposed regulation finds its basis in the need to strengthen transparency in e-

commerce and ensure that consumers can make fully informed purchasing decisions in the digital environment. Unlike face-to-face contracts, in sales made via information society services, the consumer is unable to directly assess the physical characteristics of the product and must rely essentially on the information made available by the trader via the electronic interface. In this context, reducing the content or quantity of a product whilst maintaining a substantially identical presentation may make it difficult for consumers to correctly perceive a factor that is objectively relevant to their economic decision. The obligation to provide clear and prominent information regarding this reduction is therefore a measure designed to address an information asymmetry inherent in e-commerce, thereby strengthening consumer confidence in this sales channel, in line with the objectives set out in Directive 2000/31/EC on certain legal aspects of information society services.
Furthermore, the measure is consistent with the framework established by Directive 2000/31/EC, Articles 5 and 10 of which set out a transparency regime applicable to information society service providers by imposing information obligations designed to ensure the transparent functioning of the digital market. The proposed regulation does not limit the freedom to conduct a business or condition the marketing of products whose content has been reduced, nor does it introduce restrictions on the fixing of prices or the characteristics of the goods offered. Its scope is limited solely to requiring that any objective circumstance likely to have a significant influence on the purchase decision be communicated clearly and visibly prior to the conclusion of the electronic contract; this constitutes an appropriate, necessary and proportionate measure to ensure a high level of consumer protection and to enhance transparency in e-commerce, without disrupting the normal functioning of the internal market.
Practice of dynamic prices. In light of the principle of full harmonisation under the UCPD, the Commission services would like to invite the Spanish authorities to clarify whether the main objective of these provisions is the protection of consumers against misleading marketing and, in that case, whether the unfairness of such practices is still assessed on a case-by-case basis

Although, for reasons of legislative consistency, the proposed new rules on commercial communications that use exposure to a risk or danger as the principal means of commercial persuasion are incorporated into the legislation governing unfair commercial practices, the purpose of the measure is not rooted in the rationale or scope of the Unfair Commercial Practices Directive (UCPD). It should be borne in mind that Law 3/1991 of 10 January 1991 on Unfair Competition is not a law transposing the UCPD, but rather contains many additional provisions.
This regulation responds to the objective of ensuring the transparency and integrity of the functioning of digital markets by laying down specific information obligations in respect of automated price determination systems used in electronic commerce. The use of algorithmic mechanisms capable of continuously adjusting the price of a given good or service on the basis of multiple variables is a characteristic of the digital economy which introduces a structural information asymmetry between economic operators and market users. This asymmetry does not stem from the price ultimately quoted – the setting of which remains at the discretion of the business operator in the exercise of freedom of enterprise – but rather from the inherent opacity of how these systems operate, where the recipient is unaware that the quoted price forms part of an automated process of continuous variation and lacks sufficient information to understand the economic context in which they are making their purchasing decision. In this context, the regulation aims to enhance transparency in digital markets and confidence in information society services by imposing proportionate disclosure requirements regarding the operation of dynamic pricing systems.
The measure is consistent with the evolution of Union law towards an increasing requirement for transparency in the functioning of digital environments and algorithmic systems that condition users' economic decisions. In particular, Directive 2000/31/EC sets up a transparency regime applicable to information society service providers by means of information obligations aimed at ensuring the open and reliable functioning of electronic commerce, a purpose which has subsequently been reinforced by European regulations on digital services and on artificial intelligence. The obligation to provide information on the use of dynamic pricing systems, as well as on the objective parameters that determine their evolution over time, constitutes an appropriate, necessary and proportionate measure to ensure transparency in the digital market without restricting undertakings' freedom to set prices, disrupting the functioning of competition mechanisms or limiting the use of algorithmic pricing tools.

The Commission services invite the Spanish authorities to clarify whether the rules apply to air services, and, if that is the

case, how they are compatible with freedom of pricing and price transparency rules in Articles 22 and 23 of the ASR.

In a general context, competition on pricing is the cornerstone of free and undistorted competition within the EU internal market. Pricing policies form the basics of that and are to be safeguarded as business secrets. How does the obligation, which would presumably apply to all operators and any intermediaries, to publish both minimum and maximum price and complete evolution over time comply with that requirement?

The proposed regulation is fully compatible with Articles 22 and 23 of Regulation (EC) No 1008/2008, as it does not introduce any limitation on the freedom of air carriers to set their fares, change their prices or use dynamic pricing systems. In particular, the measure does not set maximum or minimum prices, does not condition the economic criteria used for fixing them or restrict the use of algorithmic tools or performance management techniques (yield management), the use of which constitutes a well-established practice in the air transport sector. Its purpose is limited exclusively to enhancing the transparency of the information provided to users regarding the operation of such systems when services relating to the same flight or service on a specific date are marketed, ensuring that the decision to purchase can be made with full knowledge of the circumstances affecting the evolution of the price quoted.
Furthermore, the measure represents a logical extension of the objective of transparency enshrined in Article 23 of Regulation (EC) No 1008/2008, under which air fares must be made public in such a way as to enable passengers to clearly understand the applicable price and the various components of that price. The increasing use of automated dynamic pricing systems has significantly increased the opacity of the tariff formation process, generating an information asymmetry that hinders the effective comparability of offers and the exercise of a free and informed choice. In this context, the obligation to provide information on the use of dynamic pricing systems and on the price range applicable to the same service during its marketing period does not alter the free price formation regime laid down in Article 22 of the Regulation, but rather strengthens the principle of transparency underlying Article 23 thereof, by means of a proportionate, non-discriminatory measure aimed at improving the efficient and competitive functioning of the air transport market for the benefit of all its users.

The Commission’s services would also appreciate clarification regarding Article 97 (pre-contractual information on distance and off-premises contracts) of the amended General Law on the Protection of Consumers and Users. Commission services understand that Article 97 of the Law covers pre-contractual information requirements, as per Article 6 of the CRD. Commission services understand that the aim of this provision is to ‘warn’ consumers when the price has been configured by means of a dynamic or personalised pricing system, based on automated decision-making.

Article 97(1)(f) of the TRLGDCU, which deals with pre-contractual information for distance contracts and contracts concluded off-premises, includes a provision stating that consumers must be informed that the price has been determined using a dynamic or personalised pricing system. However, Article 97(1)(f) has a broader scope than merely providing information, as it stipulates, amongst other things, that the parameters must not be discriminatory; the obligation to provide information on the price range; the business's obligation to retain records of price ranges for three years; and that non-compliance will result in the refund of sums paid, etc., although these provisions have been included in this article for the sake of regulatory consistency.

The Commission’s services wish to clarify the purpose and relationship between the following two provisions of Article 97(f) (in italics, quotation from the draft bill): information must be provided to the effect that the price has been determined by means of a dynamic or personalised pricing system, based on automated decision-making, which must remain unchanged throughout the purchasing process, as well as the parameters taken into account in determining that price;
Once the purchase process has begun, no price variation may be made at any time for that purchase.

With regard to the first paragraph, the aim is to ensure that the price quoted is the final price the consumer will pay, and

that the price remains unchanged from the moment the consumer begins the purchase process, thereby preventing a situation in which consumers begin the process of purchasing a good or service and, at the time of payment, find that the price has increased substantially.
With regard to the second paragraph, it reiterates that the price cannot be altered, thereby confirming the intended purpose of the wording.

Furthermore, the Commission services wish to understand whether the provisions of Article 97(f) concern only financial-sector products or services, or whether they apply more broadly to all contracts for goods and services.

The provisions of Article 97(f) of the TRLGDCU would apply to all sectors. However, for the financial sector, the term ‘data sources’ has been used instead of ‘parameters’, in line with the terminology set out for that sector in Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on consumer credit agreements

Finally, the Commission services would like to know the objectives of these requirements set out in Article 97(f).

The Commission services wish to understand whether these provisions will constitute additional mandatory pre-contractual information requirements, considering that consumer information requirements in consumer contracts for distance and off-premises contracts are regulated in Article 6 of CRD, as explained above. If so, the Commission services ask the Spanish authorities to explain whether these additional information requirements are imposed in accordance with the Services Directive 2006/123/EC or the E-Commerce Directive 2000/31/EC as provided in Article 6(8) of the CRD.

The proposed regulation is not intended to discipline price formation mechanisms, limit the use of dynamic price determination systems or impose restrictions on the freedom to conduct a business in the development of commercial strategies based on algorithmic tools. Its purpose is exclusively limited to ensuring the transparency of the information provided during the electronic contracting process when the price offered has been determined using automated dynamic variation systems. Consequently, the measure does not affect operators’ freedom to set the prices of their goods or services, to change those prices at any time, or to use dynamic pricing models; rather, it establishes an obligation of transparency regarding an objective aspect of the electronic contracting process that is relevant to the proper functioning of digital markets.
This objective is underpinned by the principles underlying Directive 2000/31/EC, Articles 5 and 10 of which – which are not an exhaustive list – establish a framework designed to ensure the transparency of information society services by imposing information obligations on providers of electronic services. Similarly, Article 22 of Directive 2006/123/EC aims to ensure that recipients of services have sufficient information to make informed decisions, establishing transparency as an essential element for the proper functioning of the internal market. The proposed regulation builds on these principles in the context of a technological landscape that has emerged since the adoption of both Directives, characterised by the widespread use of algorithmic systems capable of automatically adjusting prices based on multiple variables that remain hidden from the user. In this context, the obligation to provide information on the use of these systems and on the objective parameters governing their operation constitutes an appropriate measure to address the information asymmetry inherent in this type of technology, without interfering with the freedom of businesses to determine the final price of goods or services, nor imposing any restrictions on the economic criteria used to set those prices.
The measure also responds to the principle of proportionality by merely requiring transparency with regard to the use of automated price determination systems, without imposing the disclosure of the algorithm used, the mathematical models used, the internal weighting criteria or any other information constituting a business secret. The duty to provide information relates exclusively to objective aspects of the contracting process that enable the user to recognise that the price quoted forms part of a dynamic pricing system and to understand the economic context in which they are making their contracting decision. The regulation thus fully preserves the freedom to conduct a business recognised by Article 16 of the Charter of Fundamental Rights of the European Union and respects the principle of proportionality set out in Article 52(1) thereof, as it constitutes the least restrictive measure to achieve the legitimate objective of strengthening transparency and trust in digital markets.

The Commission services would also welcome clarification regarding Article 20(c) (Information to be included in the commercial offer of goods and services) of the amended General Law for the Defence of Consumers and Users: the trader shall provide the price information in a clear and comprehensible manner where that price has been set on the basis of a dynamic or personalised pricing system based on automated decision-making.

The Commission services wish to clarify whether the information about the use of a dynamic pricing system will constitute additional mandatory pre-contractual information requirement for distance and off-premises contracts, considering that consumer information requirements for such contracts are regulated in Article 6 of the CRD.
If so, the Commission services ask the Spanish authorities to explain whether these additional information requirements are imposed in accordance with the Services Directive 2006/123/EC or the E-Commerce Directive 2000/31/EC as provided in Article 6(8) of the CRD.

This would constitute an additional information requirement, applicable to both physical and distance sales, and the explanations provided in the previous point would apply.

Provisions relating to the transposition of Directive (EU) 2024/1799 promoting the repair of goods: Article 2(20) of the draft bill amends Article 127a of the General Law for the Defence of Consumers and Users relating to the repair and after-sales services.

Article 127a (5) reads as follows: 5. It is prohibited to increase the prices of spare parts when using them in repairs. […] Could the Spanish authorities explain in more detail what the meaning and purpose of this prohibition are?

Article 11(4) of the now repealed General Law 26/1984 of 19 July 1984 for the Defence of Consumers and Users already contained this wording: ‘It is prohibited to increase the prices of spare parts when using them in repairs, or to charge for labour, transport or call-out fees in excess of the estimated average costs in each sector; the various items must be itemised separately on the invoice.’
This wording was carried over into Article 127a of the TRLGDCU.
The wording of the draft bill maintains the rights acquired by Spanish consumers since 1984 – as confirmed in the 2007 version – whilst adapting them to the requirements for the transposition of Directive (EU) 2024/1799 on the right to repair, without, however, rolling back those rights.
The aim is to ensure that there is no artificial increase in the prices of spare parts when they are used by an independent repairer, compared with the published prices for the same part.

Article 3 of the draft bill introduces a co-financing mechanism for the costs of repair as follows: (…)

The Commission services understand these provisions establish measures implementing Member States’ obligation to promote repair under Directive (EU) 2024/1799. In this context, the Commission services would like to ask for the following clarifications on their functioning:

With regard to Article 3(2), how does the financing mechanism apply if the repair costs are less than 50 % of the sale price?

Article 3(2), third paragraph, of the APL constitutes an exception to the rules set out in Article 3(2), first paragraph, subparagraphs (a), (b) and (c), which shall apply as a general rule where the exceptional circumstances referred to in Article 3(2), third paragraph, do not apply.
In other words, the general rule is that operators contribute to the cost of the repair at specific percentages of the repair

price, namely 20 %, 10 % and 5 % of the total cost.
By way of exception, in the event that the cost of the repair exceeds 50 % of the selling price of the good on the market or of the price at which it was last marketed, this will be the price on which the aforementioned percentages have to be applied. The purpose of this exception is to prevent contributions that are disproportionate to the market value of the asset.

With regard to Article 3(5), are repairers obliged to provide consumers with the European Repair Information Form if they wish to benefit from the financing scheme?

Article 3(5) of the APL specifies that repairers shall be obliged to provide consumers with the European Repair Information Form only if they wish to benefit from the financing scheme. In the event that they do not wish to take advantage of it, it is voluntary.

In their introductory remarks to this notification, the Spanish authorities mention that, in order to benefit from the financing scheme, consumers must turn to a repairer registered on the European Online Repair Platform. Could the Spanish authorities confirm whether the manufacturer's authorised repairers can also register on the European Online Repair Platform?
All repairers, whether or not they are authorised by a particular brand, will be able to register on the platform's Spanish national section, regardless of their relationship with manufacturers.
If the manufacturer's authorised technicians operate as repairers and meet the requirements laid down in Spanish legislation, they may be registered.

Provision concerning 'the resale of contracts for the supply of goods or services to consumers or end-users'

The Commission services ask the Spanish authorities to clarify whether the proposed provision on the 'resale of contracts' applies only to the resale of tickets for public shows and recreational activities, or whether it also covers the resale of other goods and services. In addition, the Commission services would appreciate a clarification as to whether the limitation provided for on the resale price applies only to the resale by businesses (professionals), i.e., only in business-to-consumer context, or to any resale.

The Article concerns the resale of contracts for the provision of goods or services to consumers or end-users, broadening the scope of the initially proposed measure relating to the resale of tickets for public events.
The measure applies solely to the resale of tickets to end consumers (B2C) and does not affect business-to-business (B2B) transactions.
The Regulatory Impact Analysis Report (MAIN) will be reviewed to eliminate any potential inconsistency in this regard.

Information Society Services The Spanish authorities are kindly invited to confirm whether the provisions of the notified draft, in particular Articles 20 and 97, are intended to apply to providers of information society services within the meaning of Directive 2000/31/EC.

The notified provisions would apply to information society services, within the meaning of Directive 2000/31/EC, intended for the electronic purchase of goods or services by end consumers.

Whether the notified draft would apply to providers of information society services established in Member States other than Spain;

Yes, they would apply to all providers who direct their commercial offers to consumers located in Spanish territory.

If so, how do the Spanish authorities intend to comply with the requirements set out in Article 3(4) of Directive 2000/31/EC, in particular in view of Case C-376/22 of the Court of Justice;

The proposed measures do not constitute a measure adopted under Article 3(4) of Directive 2000/31/EC, but a general and abstract regulation objectively applicable to the provision of certain information society services on Spanish territory. In this regard, recent case-law of the Court of Justice of the European Union has clarified that the mechanism provided for in that provision applies only to individualised measures directed at a specific information society service provided by one or more specifically identifiable operators. It does not extend to national rules of general application that lay down objective obligations for a category of service providers. Accordingly, the provisions set out in the draft bill do not constitute an exception to the country-of-origin principle laid down in Article 3 of Directive 2000/31/EC, nor are they intended to restrict the cross-border provision of services by means of individual measures directed at operators established in other Member States. Consequently, they are not subject to the specific procedure provided for in Article 3(4) of that Directive.
Measures relating to transparency in the use of dynamic pricing systems, to information on reductions in the content of products sold electronically, or to the use of certain commercial communication techniques serve a horizontal regulatory purpose consisting of establishing general standards of transparency and the functioning of digital markets, without targeting any specific service provider or imposing individual restrictions on the freedom to provide services from another Member State. Its compatibility with EU law must therefore be examined in the light of the applicable substantive harmonisation rules and the principles of necessity, proportionality and non-discrimination, but not from the perspective of the exceptional regime provided for in Article 3(4) of Directive 2000/31/EC, the interpretation of which by the Court of Justice expressly excludes this type of general and abstract measure from its scope.

what would be the obligations applicable to information society services resulting from the notified draft?;

The applicable regime of obligations and liabilities would remain that established under the existing legislation, in particular Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (the Digital Services Act).
In this sense, the obligations resulting from the APL, and the responsibility for their compliance, would fall on the operator that places the services or products on the market.

what would be the system for supervision of compliance and enforcement of the above obligations applicable to information society services, and in particular whether non-compliance would result in the imposition of fines or other type of sanctions or penalties.

In the light of each of the amended articles, the rules on compliance and enforcement would be those laid down in the TRLGDCU itself, Title IV of which, on the power to impose penalties, lays down the rules on penalties for such infringements.

The Commission services would welcome more information on whether the provisions of the notified draft are also intended to apply to providers of online intermediary services, in particular but not only online platforms, as defined in Article (3)(g) of Regulation (EU) 2022/2065.

As noted above, the proposed measures do not alter the liability regime set out in the Digital Services Act and do not apply directly to intermediary services or online platforms regulated by that Regulation.

Air transport

Introduction of a price cap in emergency situations

Article 22 ASR gives airlines the right to set their prices freely, and allows for one exception only under Article 16(1) with the imposition of a Public Service Obligation.
The Spanish authorities are invited to clarify how the introduction of ex ante rules on a price cap applicable to air fares is compatible with Article 22 and Article 16 ASR.

The Second Additional Provision of the APL, concerning the notification of measures relating to air or rail transport, already stipulates that all measures set out in the legislation which may affect pricing freedom in air or rail transport must comply with European Union regulations in this area.
In particular, any measure affecting air or rail transport shall comply with Article 21 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.
In any event, the consolidated case-law of the Court of Justice of the European Union has established that economic freedoms may be subject to restrictions justified by overriding reasons in the public interest, provided that such measures respect the principles of necessity, proportionality and non-discrimination (see, inter alia, judgments of 14 December 2004, Swedish Match, C-210/03; of 12 June 2003, Schmidberger, C-112/00; and of 22 January 2013, Sky Österreich, C-283/11). The Court has also reiterated that the proportionality check requires verification that the measure is appropriate to achieve the legitimate objective pursued and does not go beyond what is strictly necessary.

Advertising restrictions grounded on sustainability concerns

The Commission services invite the Spanish authorities to clarify the interaction between ReFuelEU Aviation and the limitation on advertising 'transport services propelled exclusively by fossil fuels', and whether the limitation applies to air services operated partially with SAF in the fuel blend or without a SAF fuel blend on a particular flight. Furthermore, at the time of advertising the air service, an air carrier may not know whether it would be propelled exclusively by fossil fuels or partially with SAF in the fuel blend; intermediaries would be even less likely to know this information.

The restriction on advertising transport services powered exclusively by fossil fuels is in line with the decarbonisation objectives for the transport sector set out in European Union law and constitutes an accompanying measure designed to enhance the effectiveness of European energy transition policy. In particular, Regulation (EU) 2023/2405 (ReFuelEU Aviation) establishes a binding regulatory framework aimed at promoting the progressive replacement of fossil fuels by sustainable aviation fuels, imposing increasing obligations to incorporate such fuels with the aim of reducing emissions from air transport and creating conditions of competition that favour the development of more sustainable modes of transport. The proposed regulation does not alter this framework or introduce additional technical requirements for the provision of transport services; rather, it contributes to the achievement of its objectives through a complementary instrument that steers commercial communication towards options consistent with the decarbonisation pathway set out by the European legislator.

Consequently, the proposed measure would apply to those services which do not use, even partially, a fuel source that is not of fossil origin.

Article 15(1) ASR provides air carriers with the freedom to provide services anywhere in the Union. Member States may restrict that freedom in four clearly defined situations, one of which is notably Article 20 on environmental measures. The Commission services would welcome clarifications on whether the Spanish authorities believe that limitations on advertising of air services constitute a restriction on the freedom to provide services, and their reasons for that position. And, if they do constitute a restriction, what is the legal basis for that restriction?

The proposed regulation does not constitute a restriction on the freedom to provide intra-Community air services guaranteed by Article 15 of Regulation (EC) No 1008/2008, since it does not affect the right of Community air carriers to operate air transport services, nor does it make access to the market subject to obtaining additional permits, authorisations or administrative requirements. The measure does not introduce any limitation with regard to the opening of routes, the frequency of services, the capacity offered, the fixing of tariffs or the conditions of operation of air services, while fully preserving the essence of the freedom to provide services recognised by that regulation. Its scope is limited exclusively to the regulation of certain commercial communications disseminated within Spanish territory, without affecting the legal framework governing access to or the exercise of air transport activities.
Consequently, the prohibition of certain forms of advertising does not alter the conditions of competition between airlines nor does it restrict the exercise of the economic activity covered by Regulation (EC) No 1008/2008; rather, it regulates an

ancillary aspect of the commercial promotion of certain services in pursuit of objectives of general interest compatible with EU law. The fact that a commercial communication cannot be disseminated in accordance with the terms laid down by national legislation does not prevent the provision of the relevant air service, nor does it limit users' ability to contract such a service, nor does it alter the regime of free access to the market established by Article 15 of the Regulation. The measure, therefore, does not constitute a restriction on the right of airlines to operate intra-Community air services, but rather a regulation of the conditions under which certain commercial communications may be disseminated, adopted in full compliance with the principle of proportionality and without affecting the core of the economic freedoms guaranteed by Union law.

In light of this, the Commission services would welcome more information on how the advertising of return flights would be affected, where one leg could be partially powered by non-fossil energy sources but the other leg may be 100 % fossil fuel.

In the case of services marketed as return tickets, the legal nature of each of the journeys comprising the service must be taken into account, notwithstanding the fact that both are marketed jointly under a single contract of carriage. For the purposes of applying the advertising ban, each leg of the journey constitutes a transport service that may have its own energy characteristics, depending on the fuel actually used to provide the service and on whether or not there are alternatives powered wholly or partly by non-fossil energy sources under the conditions set out in the APL. Consequently, the fact that one of the legs of the journey may be undertaken using, even partially, sustainable fuels or non-fossil energy sources does not alter the legal classification of the remaining leg where that leg continues to be operated exclusively using fossil fuels.
Consequently, where a return service comprises one leg subject to the prohibition and another that does not meet the criteria for its application, the commercial communication must not present the service as a whole as a single, uniform offer that circumvents the restrictions laid down by the regulation. In such cases, the operator may only advertise the service if the communication clearly and unambiguously distinguishes between the two legs of the journey and avoids attributing to the journey as a whole environmental characteristics that derive exclusively from one of them. Otherwise, the use of a section of the journey powered partly by non-fossil energy sources to promote a service that includes another section of the journey powered entirely by fossil fuels would undermine the purpose of the regulation and allow its application to be circumvented through the contractual bundling of services with different energy characteristics.

The Commission services also invite the Spanish authorities to explain how the application of this provision would avoid discrimination against airports at which fuel suppliers may not yet be able to provide SAF as part of the fuel blend and discrimination against airlines flying to/from such airports, and including taking into account the fact that neither the airports nor the airlines are making the decision which airports the fuel suppliers supply with SAF.

The proposed regulation does not introduce any difference in treatment between airports, airlines or routes depending on their geographical location, the Member State in which they are established or the airport from which they operate, nor does it make its application conditional on the availability of sustainable aviation fuels (SAF) at a given airport. The criterion used by the regulation is exclusively objective and functional, taking into account the energy characteristics of the transport service effectively subject to commercial promotion and the existence of mobility alternatives driven totally or partially by non-fossil energy sources for the same route. Consequently, the measure does not differentiate on the basis of circumstances beyond the operator's control, nor does it penalise those companies operating from airports where the supply of SAF is not yet fully established; rather, it applies a uniform regime to all commercial communications that find themselves in the same objective situation.

Similarly, the regulation does not transfer to air carriers or airport managers the consequences arising from decisions taken by third-party economic operators in relation to the supply of sustainable fuels. Regulation (EU) 2023/2405 itself configures the implementation of the SAF as a progressive process whose implementation depends, among other factors, on the obligations imposed on fuel suppliers and the evolution of production and distribution capacities throughout the Union. The national measure does not alter this division of responsibilities nor does it impose any additional obligations on airlines regarding the supply or availability of SAF; it merely sets out the conditions for the dissemination of certain commercial communications, taking into account the objective characteristics of the service being promoted.

Consequently, any differences that may arise during the phased implementation of the SAF do not stem from the proposed legislation, but rather from the differing practical developments in the European market for sustainable fuels, as anticipated by the EU legislator itself; this does not, however, allow for the conclusion that there is discrimination attributable to the national legislation, which remains general, objective, non-discriminatory and proportionate in its application.

The Commission services would also welcome clarifications on the rationale for the criterion that an alternative transport means should be available for which the journey time does not exceed that of the fossil fuel-powered service by more than two and a half hours. In particular, the Spanish authorities are invited to explain how this measure achieves the objective (and what that objective is), in what sense it is non-discriminatory, on what basis the threshold of an additional two and a half hours was set, and why the measure is not more restrictive than necessary to address the problems. The Spanish authorities are also invited to confirm that any such case-by-case analysis will take into account travel by diesel-powered locomotives or conventionally powered cars.

The restriction on advertising applies only where there is an alternative transport option powered wholly or partly by non-fossil energy sources, which allows the same journey to be completed in a total time that does not exceed the corresponding service powered exclusively by fossil fuels by more than two and.a half hours. This criterion addresses the need to ensure that the measure applies exclusively in those cases where the user has a mobility alternative that is objectively comparable from a functional point of view, thereby preventing the advertising restriction from affecting journeys where fossil-fuel-based transport remains the only reasonably equivalent option. The regulation therefore aims to encourage a gradual shift in demand towards modes of transport with a lower climate impact, but only where such a choice is practically feasible without imposing disproportionate sacrifices in terms of accessibility or journey time.
The setting of a maximum time difference of two and a half hours reflects the Spanish legislature’s exercise of its discretion to specify, by means of objective and verifiable criteria, the conditions for the application of a measure designed to promote the transport decarbonisation objectives adopted by the European Union. The choice of this threshold is not intended to identify an absolute scientific limit beyond which a transport alternative ceases to be competitive, but rather to establish a uniform, predictable and easily applicable regulatory criterion that makes it possible to distinguish between cases where a functionally equivalent transport alternative exists and those where transport powered exclusively by fossil fuels remains the only reasonably comparable option. This legislative option is supported by the available technical evidence on intermodal competition, which identifies total travel time as the main determinant of the choice between air and rail transport and shows that high-speed rail maintains a high replacement capacity for air transport when time differences remain within reasonable margins.
The measure is appropriate for achieving the intended objective, as it limits the advertising restriction exclusively to those services for which there is a real possibility of substitution by modes of transport with a lower climate impact. Similarly, this is necessary, since a stricter criterion would significantly reduce the scope of the rule and undermine its effectiveness, whilst a substantially higher threshold could extend the restriction to journeys where the available alternative would no longer constitute a materially equivalent option for the average user. The setting of a single time parameter also ensures equal treatment between operators and avoids individualised or discretionary assessments on each route, applying independently of the air carrier, the infrastructure manager or the alternative mode of transport. Consequently, the regulation does not discriminate between economic operators, but rather applies an objective, general and transparent criterion directly linked to the intended purpose, restricting advertising only in those cases where such a restriction can effectively contribute to promoting a modal shift compatible with the climate neutrality objectives established by EU law.
The setting of the two-and-a-half-hour threshold is objectively supported by the experience of the Madrid–Barcelona corridor, which is considered one of the main European examples of effective competition between air transport and high-speed rail. The entry into service of the high-speed line significantly reduced door-to-door travel times and allowed rail transport to be configured as a fully competitive alternative to air transport, producing a large-scale modal shift in favour of rail without the need to restrict the provision of air services. This experience shows that, when the time difference between the two modes of transport remains within reasonable margins, time ceases to be a decisive obstacle to the choice of the alternative with the least environmental impact, with other factors – such as frequency, comfort, accessibility of stations, reliability or price – gaining increasing weight in the user’s decision. In this context, the reference to a maximum difference of two and a half hours is not an arbitrary choice, but rather reflects the intention to limit the

measure to those routes where intermodal competition is genuine and effective, ensuring that the advertising restriction applies only where there is a functionally equivalent transport alternative that is objectively capable of meeting the demand, whilst preserving, on the other hand, full freedom to promote those services for which such equivalence does not exist.
The regulation also respects the principle of proportionality, since it constitutes the least restrictive measure to achieve the objective of general interest pursued. Indeed, it does not prohibit the provision of the transport services in question, does not restrict market access, does not impose conditions on the opening of routes, nor does it interfere with operators' freedom to set prices or organise their businesses. Its sole effect is to limit the commercial promotion of certain services where objective circumstances permit the conclusion that the user has a reasonably functionally equivalent and significantly less emission-intensive mobility alternative. Thus, the regulatory intervention strikes an appropriate balance between the protection of the environmental objectives pursued by the European Union and respect for the freedom to conduct a business and the freedom to provide services, limiting the restriction to the minimum necessary to ensure its effectiveness.
Similarly, it is confirmed that any case-by-case analysis will take into account travel by diesel locomotives or conventional cars.

Last, the Spanish authorities are invited to clarify whether the advertisement ban applies also to other modes and aviation, and to explain how any such advertisement ban would be implemented for the different transport modes (i.e. diesel powered train journeys, conventional car or ships).

The advertising ban provided for in the APL would apply to any type of means of transport, with the existing alternatives and the fuel used for the journeys concerned to be analysed in each case.

Second Additional Provision – Requirement to notify the Commission of air transport pricing measures

The draft bill introduces a provision obliging the Spanish authorities to notify the Commission of any measures affecting the freedom of air pricing, on the basis that such measures must comply with EU legislation.

The Commission services invite the Spanish authorities to clarify what the legal basis is for such a notification requirement, and the legal basis on which the Commission would be empowered to act in response to such notification.

The notification would be made in accordance with the provisions of Article 21 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008, on common rules for the operation of air services in the Community, which provides for a mechanism for prior notification of emergency measures adopted by a Member State that may restrict or impose conditions on the exercise of traffic rights.

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