DigitalES contribution to the TRIS/(2026) 0532 notification procedure concerning the Draft Sustainable Consumption Law.

Preliminary considerations

This Law consists of three articles, two additional provisions, one repealing provision and seven final provisions.
Article One concerns the amendment of Law 3/1991 of 10 January on Unfair Competition.
Article Two concerns the amendment of the consolidated text of the General Law for the Protection of Consumers and Users.
Article Three concerns measures to promote repairs covered by the Right to Repair.

Our comments follow the structure of the proposed legislation.

1. Review focusing on those aspects of the Draft Law that affect advertising rules and the Law on Unfair Competition.

In line with the issues identified in the documents submitted by DigitalES and CEOE, we consider that the principal matters with a potential impact from the perspective of European Union law have already been appropriately identified, particularly as regards:

1. Advertising prohibitions that apply exclusively at national level

These include advertising for fossil fuels, fear-based advertising and communications associated with ageism.
As they do not derive from rules harmonised at European level, they could:

- pose risks of regulatory fragmentation;
- affect the freedom to provide services; and
- raise doubts as to their compatibility with the internal market.

2. Stricter rules governing environmental claims and sustainability labels

The proposed amendments to Law 3/1991 introduce requirements additional to the framework established by Directive (EU) 2024/825, which could:

- lead to a lack of harmonisation with the European framework;
- pre-empt the future Green Claims Directive in an inconsistent manner; and
- create perverse incentives such as greenhushing, given the breadth of the concepts used and the severity of the penalty regime.

3. Expansion of the concept of misleading and unfair practices

Expanding the range of circumstances covered in the field of advertising, without a direct basis in harmonised EU rules, may:

- increase legal uncertainty;
- introduce indeterminate legal concepts that are difficult to apply in a dynamic sector such as digital services and telecommunications; and
- create obstacles to the internal market if national obligations diverge from European standards.

4. Observations specific to the telecommunications sector

Consistently with the above and within the TRIS framework, we consider it appropriate to reinforce three points:

a) Software updates

It is essential to avoid going beyond Directive (EU) 2024/825, which provides for full harmonisation.
Any departure from it creates regulatory overreach and considerable legal uncertainty.

b) Dynamic and personalised pricing

The proposed obligations go beyond those contemplated in harmonised European legislation and could constitute a technical regulation subject to Directive (EU) 2015/1535.

c) Penalty regime

Combining indeterminate concepts with penalties of up to 6% of global turnover is disproportionate and exacerbates the lack of legal certainty.

2. **Review focusing on matters affecting consumer and user legislation.**

The objectives pursued by the Draft Sustainable Consumption Law are viewed positively, particularly the strengthening of consumer protection and the promotion of more sustainable consumption models. Nevertheless, certain provisions of the text may raise doubts as to their compatibility with European Union law.
In other words, the Draft Law seeks to transpose several European directives, including Directive (EU) 2024/825 (on environmental claims) and Directive (EU) 2024/1799 (on the Right to Repair). However, a number of provisions in the text appear to go beyond the content of those directives or to introduce rules not envisaged under Union law, thereby raising issues of compatibility with the EU legal order.

In general terms, certain amendments to the Consolidated Text of the General Law for the Protection of Consumers and Users introduced by the Draft Law may give rise to a conflict with European Union law. This is the case, for example, in relation to:

- the rules governing pre-contractual information for consumers;
- the regulation of commercial practices relating to environmental or sustainability claims; and
- certain provisions concerning product durability, reparability and useful life.

It should be borne in mind that these areas are extensively harmonised by European Union law. For example:

I) Amendments concerning pre-contractual information for consumers

The Draft Law introduces new consumer-information obligations into the TRLGDCU concerning matters such as:

- product durability;

- its reparability;
- the availability of spare parts; or
- the existence of functional limitations related to the product's useful life.

However, these matters are already partly regulated under European Union law. Directive 2011/83/EU, for example, likewise establishes a full-harmonisation regime in relation to pre-contractual information requirements for consumer contracts.
Consequently, introducing additional information obligations at national level would raise compatibility issues with that harmonised regime if such obligations:

- alter or expand the mandatory information required under Union law; or
- create regulatory divergences between Member States that may affect the functioning of the internal market.

II) Repairs

Article 13 of Directive (EU) 2024/1799 merely requires Member States to adopt at least one measure to promote repair, allowing them flexibility in choosing how to encourage repairs.

The Draft Law, however, goes further and imposes a mandatory producer co-financing scheme for repairs carried out after the expiry of the legal guarantee period. The scheme establishes the following compulsory contributions: during the two years following expiry of the guarantee, the producer must contribute 20% of the repair costs; during the third year, the contribution is reduced to 10%; and during the fourth year, the contribution is 5%.

This measure entails an additional economic burden that is not harmonised at European level and cannot be regarded as mere transposition of Union law.

Furthermore, Article 127 bis of the TRLGDCU currently in force establishes fixed periods for the availability of spare parts. It imposes a general obligation on producers to ensure the existence of an adequate technical service and spare parts for at least ten years from the date on which a product ceases to be manufactured, for all products. This is contrary both to Directive (EU) 2024/1799 establishing common rules to promote the repair of goods (hereinafter, "Directive 2024/1799") and to Regulation (EU) 2024/1781 establishing a framework for the setting of ecodesign requirements for sustainable products (hereinafter, "Regulation 2024/1781"). Those instruments pursue a central objective: to establish common rules and a uniform regulatory framework throughout the European Union in order to prevent regulatory fragmentation between Member States and ensure the free movement of goods and services, particularly in the fields of repair and ecodesign. The recitals and articles of Directive 2024/1799 and Regulation 2024/1781 listed below are therefore infringed because the provision: (i) departs from the harmonisation objectives pursued by the aforementioned European legislation; (ii) adversely affects the free movement of goods in the internal market; and (iii) ultimately gives rise to potentially discriminatory treatment of producers subject to compliance with Article 127 bis:

- *"In the context of the green transition, this Directive pursues the objective of improving the functioning of the internal market, while promoting more sustainable consumption, and thereby complements the objective pursued by Directive (EU) 2019/771." [Recital (1), Directive (EU) 2024/1799].*

- *"To achieve those objectives, and in particular to facilitate the cross-border provision of services and competition between repairers of goods purchased by consumers within the internal market, it is necessary to lay down uniform rules promoting the repair of goods purchased by consumers within and beyond the liability of the seller established by Directive (EU) 2019/771. (…) Diverging mandatory national rules in this area constitute actual or potential barriers to the functioning of the internal market, adversely affecting cross-border transactions of economic operators acting on that market." [Recital (2), Directive (EU) 2024/1799].*

- *"This Directive lays down common rules strengthening the provisions relating to the repair of goods, with a view to contributing to the proper functioning of the internal market, while providing for a high level of consumer and environmental protection." [Article 1(1), Directive (EU) 2024/1799].*

- *"Member States shall not maintain or introduce in their national law provisions diverging from those laid down in this Directive." [Article 3, Directive (EU) 2024/1799].*

- *"In order to establish an effective, harmonised and future-proof regulatory framework, it is necessary to provide for the setting of ecodesign requirements for all physical goods placed on the market or put into service (…)." [Recital (13), Regulation (EU) 2024/1781].*

- *"In order to improve the environmental sustainability of products and to ensure the free movement of products in the internal market, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission to supplement this Regulation by establishing ecodesign requirements (…)." [Recital (15), Regulation (EU) 2024/1781].*

- *"This Regulation establishes a framework for the setting of ecodesign requirements that products have to comply with to be placed on the market or put into service, with the aim of improving the environmental sustainability of products in order to make sustainable products the norm and to reduce the overall carbon and environmental footprints of products over their life cycle, and of ensuring their free movement within the internal market." [Article 1(1), Regulation (EU) 2024/1781].*

- *"Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with performance requirements set in delegated acts adopted pursuant to Article 4, on grounds of non-compliance with national performance requirements relating to product parameters referred to in Annex I covered by performance requirements included in such delegated acts." [Article 3(2), Regulation (EU) 2024/1781].*

We consider that the new wording given to Article 127 bis of the TRLGDCU by Article One, paragraph twenty, of the Draft Law remains contrary to Union law. To be compliant, the obligation under Article 127 bis should apply only to the products and for the periods laid down in the Union legal acts listed in Annex II to Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828, or in any other directly applicable sector-specific legislation. In other words, products not covered by those legal acts cannot be subject to a general obligation to provide adequate technical service

and spare parts for a minimum period of ten years.

However, the new wording allows an exception from this general ten-year obligation to provide technical service and spare parts only for products covered by the Union legal acts listed in Annex II to Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828, or by any other directly applicable sector-specific legislation, leaving all other products subject to the general obligation. We therefore consider that the proposed new wording remains contrary to the rules listed above.

To register in the Spanish section of the European repair platform, the Draft Law requires additional conditions not provided for in the Directive, such as an IAE certificate, civil liability insurance and evidence of being up to date with tax payments.

III) Amendments concerning product durability and useful life

The Draft Law introduces into the TRLGDCU a number of provisions concerning product durability and useful life, together with the information to be provided to consumers regarding those characteristics. However, these matters are already regulated or are in the process of being harmonised at European level through instruments such as Directive (EU) 2019/771.

Directive (EU) 2019/771 establishes a harmonised regime governing the conformity of goods, including aspects relating to their durability and sellers' obligations in the event of a lack of conformity.
Introducing additional national requirements relating to product durability, useful life or reparability could create regulatory overlaps or divergences from the harmonised European framework.

IV) Amendments concerning goods with digital elements

Some of the amendments to the TRLGDCU envisaged in the Draft Law affect products incorporating digital elements or software, particularly as regards product durability and their functioning over time.
These matters are regulated under Union law by Directive (EU) 2019/770 and Directive (EU) 2019/771. In particular, those directives establish a harmonised regime in relation to:

- software update obligations;
- the conformity of goods with digital elements; and
- consumer rights in the event of a lack of conformity.

Accordingly, introducing into the TRLGDCU additional or divergent obligations concerning the functional durability of products incorporating software could also raise concerns as to consistency with the harmonised European regime.
Digital services, moreover, are already subject to specific obligations under Regulation (EU) 2022/2065 (the Digital Services Act).

Introducing national restrictions on the operation of algorithmic systems could:

- fragment the European digital market; and
- introduce additional regulatory obligations for operators already subject to the DSA.

V) Potential impact on the free movement of goods

The Draft Law imposes requirements for marketing products in Spanish territory that could restrict the free movement of goods under Articles 34–37 of the Treaty on the Functioning of the European Union (TFEU).
Insofar as the amendments to the TRLGDCU introduce specific information obligations or warnings concerning product sustainability, durability or reparability, those obligations could affect the conditions under which certain goods are marketed on the Spanish market.
It is therefore necessary to ensure that the obligations laid down in the Draft Law fully respect the principles of proportionality and non-discrimination established by Union law.

These restrictions cannot be justified by overriding reasons in the public interest. Even if environmental protection were regarded as a legitimate objective, the measures would not be proportionate, as the same objectives could be achieved through less extensive restrictions.

VI) Restrictions on price personalisation through automated decision-making

The Draft Law provides that price personalisation based on automated decision-making may not result in increases in the final price in urgent or emergency situations.
Although protecting consumers in exceptional situations is a legitimate objective, the proposed regulation could create legal uncertainty concerning the use of algorithmic pricing tools, which are widely used in digital services.

It should also be borne in mind that European Union law already establishes a regulatory framework for these matters, in particular through:

- Regulation (EU) 2022/2065 (the Digital Services Act), which lays down transparency obligations for digital services; and
- the General Data Protection Regulation (GDPR), which regulates the use of automated decision-making and user profiling.

Introducing specific restrictions at national level could create regulatory overlaps and fragmentation in the European digital market.

VII) Repairs

Article 13 of Directive (EU) 2024/1799 merely requires Member States to adopt at least one measure to promote repair, allowing them flexibility in choosing how to encourage repairs.

The Draft Law, however, goes further and imposes a mandatory producer co-financing scheme for repairs carried out after the expiry of the legal guarantee period. The scheme establishes the following compulsory contributions: during the two years following expiry of the guarantee, the producer must contribute 20% of the repair costs; during the third year, the contribution is reduced to 10%; and during the fourth year, the contribution is 5%.
This measure entails an additional economic burden that is not harmonised at European level and cannot be regarded as mere transposition of Union law.

The Draft Law also establishes fixed periods for the availability of spare parts, requiring a minimum of ten years from the date on which the product ceases to be manufactured. This obligation represents an additional burden neither envisaged nor harmonised under European legislation.

To register in the Spanish section of the European repair platform, the Draft Law requires additional conditions not provided for in the Directive, such as an IAE certificate, civil liability insurance and evidence of being up to date with tax payments.

VIII) Additional issues

Article 193 TFEU provides that Member States must notify the transposition of measures that are more stringent than those established at European level. Several provisions of the Draft Law clearly go beyond the content of the directives it transposes, which would require their notification to the European Commission.

The Draft Law includes provisions unrelated to the directives it is intended to transpose. In particular, it regulates the following matters:

- 'Shrinkflation', understood as the practice of reducing the quantity of a product while maintaining the same price.
- The prohibition of 'fear-based advertising'.
- The regulation of prices in emergency situations.

These matters cannot be regarded as mere transposition of Union law and fall outside the exceptions laid down in Article 5 of Directive (EU) 2015/1535.

IX) Conclusions

In line with the foregoing, it may be considered that, if adopted, the Draft Law would create a disproportionate regulatory framework that departs from European harmonisation, introducing additional costs, unjustified restrictions and a substantial adverse impact on competitiveness.