TRIS Observations: Spain's Draft Law on Sustainable Consumption

Submitted by members of the Policy Professionals Network on ESG matters, coordinated by Forética

The following document compiles observations submitted by members of Forética's Policy Professionals Network on ESG matters, together with comments from Forética. As coordinator of the Network, Forética considers these contributions to be constructive and well-founded, and supports their submission to the European Commission as a means of promoting legal certainty, regulatory effectiveness and competitiveness on the path towards a sustainable transition.

Amazon

Introduction

Members from this network submit the following observations to the European Commission regarding Spain's Draft Law on Sustainable Consumption (Anteproyecto de Ley de Consumo Sostenible), notified under the TRIS procedure on 12 June 2026 notification 2026/0294/ES).

While we support the objectives of consumer empowerment and sustainability, we are concerned that several provisions of the Draft Bill exceed the scope of Directives (EU) 2024/825 and 2024/1799, creating barriers to the internal market that directly affect our members operating across the European Union.

Concerns Regarding the Internal Market

The Draft Bill introduces national obligations that go beyond the harmonised EU framework, creating risks of regulatory fragmentation that would affect operators established in Spain and other Member States. Specifically:

1. Right to Repair — Exceeding Directive 2024/1799

The Draft Bill introduces a mandatory repair co-financing mechanism (20%/10%/5% over four years post-warranty) that is not foreseen in Directive 2024/1799. The Directive only requires Member States to adopt general promotional measures to encourage repair (Article 13), without authorising fixed financial obligations or cost-shifting mechanisms funded by manufacturers.

This raises concerns under the full harmonisation principle established in Article 3 of the Directive, which limits Member States' ability to introduce additional or divergent obligations for producers.

The measure creates unpredictable costs, fraud risks, and a competitive disadvantage for manufacturers operating in Spain compared to those in other Member States.

Furthermore, the requirement to maintain spare parts availability for a fixed period of ten years exceeds the competence reserved to the European Commission through delegated acts under Regulation (EU) 2024/1781 (ESPR). The global industry standard is five years, and the EU Ecodesign regulation for smartphones establishes seven years. A unilateral national requirement of ten years, without technical justification, creates a barrier to the free movement of goods (Article 34 TFEU).

We recommend that spare parts timelines be aligned with EU delegated acts, that the co-financing mechanism be removed or replaced with voluntary incentive-based alternatives (reduced VAT on repairs, public repair vouchers), and that manufacturers be afforded a minimum transition period of one year from publication of any delegated act establishing new repairability requirements.

2. Environmental Claims — Exceeding Directive 2024/825

The Draft Bill introduces prohibitions on the use of terms such as "eco," "green," or "sustainable" in trademarks and brand names. Directive 2024/825 regulates the use of environmental claims within commercial communication to prevent misleading practices, but does not prohibit their use in registered trademarks or brand identities. The national prohibition would conflict with the EU Trade Mark Regulation and create legal uncertainty for operators active across several Member States.

Additionally, the Draft Bill should distinguish between unverified private sustainability labels and those verified by recognised third-party certification schemes (EU Ecolabel, Blue Angel, Nordic Swan, among others). Restrictions should apply only to the former. Programmes that aggregate products certified by independent third parties should not be classified as "generic sustainability claims," as they facilitate -rather than hinder- informed consumer choice.

3. Digital Economy Provisions — Beyond the Scope of Transposition

The Draft Bill introduces three sets of obligations regarding online consumer reviews:

Mandatory seller right of reply. The Draft Bill requires platforms to enable a seller right of reply "through the same channel" where the consumer review is published. This obligation constitutes a technical rule within the meaning of Directive (EU) 2015/1535, as it imposes specific design

requirements on information society services — mandating the creation of new interface functionalities, moderation workflows, and notification systems exclusively for the Spanish market.

Its inclusion in a national measure without prior standalone notification as a technical rule -beyond the general TRIS notification of the Draft Bill- may compromise its enforceability against third parties, in accordance with the CJEU's established case law (Case C-194/94, CIA Security International; Case C-443/98, Unilever Italia).

Beyond the procedural concern, the mandatory right of reply raises substantive issues. It creates a risk of consumer intimidation, as sellers may use the reply mechanism to discourage negative feedback or to exert commercial pressure on individual consumers. It may be exploited for commercial purposes unrelated to addressing legitimate concerns, effectively transforming the review space into an additional advertising channel. It generates a chilling effect on consumer expression, as consumers may refrain from posting honest reviews if they anticipate a direct confrontation with the seller. These risks are particularly acute for individual consumers facing replies from large commercial operators with superior resources and legal capacity.

Extended review posting window. The Draft Bill extends the period during which consumers may post reviews to the full legal or commercial guarantee period - up to three years for products. This exceeds the maximum harmonisation framework of the Unfair Commercial Practices Directive (Directive 2005/29/EC), which does not permit Member States to impose country-specific conditions on how and when consumers may share commercial experiences (CJEU Case C-304/08, Zentrale zur Bekämpfung unlauteren Wettbewerbs). While we support consumers' ability to share meaningful feedback, the imposition of a nationally-defined posting window creates a fragmented framework where platforms must implement different temporal rules for different Member States - a clear barrier to the provision of cross-border information society services.

Review removal mechanisms. The Draft Bill imposes obligations regarding the removal of "misleading reviews" based on criteria that go beyond the notice-and-action framework established by the Digital Services Act (Regulation 2022/2065, Articles 16-17). The DSA provides the harmonised mechanism for addressing illegal content on intermediary platforms and represents a framework of maximum harmonisation for content moderation obligations. National measures that impose additional or divergent content moderation requirements on platforms — particularly based on subjective criteria such as whether a review is "misleading" — undermine the DSA's harmonised approach and create legal uncertainty for operators that must apply consistent policies across all Member States.

The existing market-driven mechanisms for ensuring review integrity including verified purchase badges, automated anomaly detection, community reporting tools, and machine learning-based fraud prevention- are more effective and proportionate than prescriptive national mandates that cannot account for the diversity of review ecosystems across different platforms and product categories.

3.2 Dynamic Pricing

The Draft Bill introduces obligations requiring the display of price history over a three-year period and the implementation of automatic reimbursement mechanisms when prices decrease after purchase. These requirements exceed the framework established by Directive 2019/2161 (Omnibus Directive) on price reduction announcements, which provides the harmonised EU standard for price transparency.

Two fundamental concerns arise:

Misallocation of responsibility. The responsibility for informing consumers about the use of personalised pricing algorithms must rest with the economic operator that effectively implements and controls such algorithms. In the context of online marketplaces hosting offers from independent third-party sellers, the platform does not determine, control, or have visibility into the pricing logic applied by each individual seller. Extending dynamic pricing obligations to intermediary platforms that merely host third-party offers — without controlling the pricing algorithms - is technically unviable and legally unfounded. Under the country-of-origin principle established in Article 3 of Directive 2000/31/EC, Member States may not impose requirements on information society service providers established in other Member States that restrict the free provision of services. A Spanish obligation requiring platforms established elsewhere to implement price history tracking and automatic reimbursement systems exclusively for the Spanish market constitutes such a restriction.

Disproportionate technical burden. The three-year price history requirement and automatic reimbursement mechanisms impose significant technical infrastructure costs on operators that must be implemented exclusively for one national market. Given that the Omnibus Directive already provides a harmonised framework for price reduction announcements (the "prior price" rule for the preceding 30 days), the Spanish requirements represent gold-plating that fragments the Single Market without proportionate consumer benefit. The CJEU has consistently held that national measures restricting the free movement of services must be justified by overriding reasons of public interest and must not go beyond what is necessary to achieve their objective (Case C-55/94, Gebhard). The existence of a harmonised EU framework addressing the same consumer protection objective (price transparency) demonstrates that less restrictive means are available.

4. Allocation of Responsibility in the Supply Chain

The Draft Bill introduces multiple information obligations — regarding repairability, sustainability claims, software updates, review management, and pricing transparency — without clearly specifying which economic operator in the supply chain bears legal responsibility for compliance.

This ambiguity creates legal uncertainty incompatible with the general principle of legal certainty recognised by the CJEU as a fundamental principle of EU law (Case C-110/03, Belgium v Commission; Case C-212/04, Adeneler).

4.1 The principle: manufacturer as primary responsible party

For product-level information — including repairability data, spare parts availability, software update impacts, and sustainability characteristics — the manufacturer is the only economic operator with the technical knowledge, design control, and data access necessary to generate and verify this information. The manufacturer designs the product, determines its material composition, controls the software architecture, decides on spare parts production, and defines the repair procedures. No other operator in the supply chain -whether importer, distributor, retailer, or online marketplace- possesses this information or has the technical capacity to verify its accuracy.

Accordingly, legal responsibility for the accuracy and completeness of product-level consumer information must rest exclusively with the manufacturer. This is consistent with the approach taken in Regulation (EU) 2017/1369 (Energy Labelling), where the supplier (manufacturer or importer) bears responsibility for the accuracy of the energy label and product fiche, and with Regulation (EU) 2024/1781 (ESPR), which places product passport obligations on the economic operator placing the product on the market.

4.2 The role of platforms: facilitation, not primary compliance

Online marketplaces and digital platforms play a legitimate role in facilitating the transmission of product information to consumers. However, their obligations should be limited to:

• making available the information provided by the manufacturer (display obligation);

• acting upon notification of inaccurate or illegal information (notice-and-action under DSA

Articles 16-17); and • cooperating with market surveillance authorities when required.

Platforms must not bear primary legal liability for the accuracy of product-level information that they did not generate, cannot independently verify, and have no technical means to assess. The Digital Services Act (Regulation 2022/2065) establishes the harmonised framework for intermediary liability in the EU, based on the fundamental principle that intermediaries do not have a general obligation to monitor the information they transmit or store (Article 8, inheriting the principle from Article 15 of Directive 2000/31/EC). National measures that impose primary compliance obligations on platforms for product information accuracy effectively create a general monitoring obligation incompatible with this harmonised framework.

4.3 Practical implications for the Draft Bill

The failure to clearly allocate responsibility in the Draft Bill creates several concrete problems:

Repairability information. If platforms are held responsible for displaying accurate repairability scores or spare parts availability data, they would need to independently verify information that only the manufacturer possesses -an obligation that is technically impossible and economically disproportionate, particularly for marketplaces hosting millions of product references from thousands of manufacturers.

Sustainability claims. If platforms bear liability for environmental claims made by manufacturers on product listings, they would effectively become regulators of manufacturer marketing -a role that belongs to market surveillance authorities, not to private intermediaries.

Software updates. If platforms are required to inform consumers about the "negative impact" of software updates deployed by manufacturers, they would need access to manufacturer development roadmaps and technical specifications -information that is proprietary and that manufacturers have no obligation to share with distribution channels.

Consumer reviews. If platforms bear responsibility for implementing seller right of reply mechanisms and for removing "misleading" reviews, they must make subjective editorial judgments about review content -transforming their role from neutral intermediary to active content moderator with associated liability risks under the DSA.

In each case, the appropriate regulatory approach is clear: the manufacturer bears primary responsibility for product information accuracy; the platform facilitates transmission and acts upon notification of problems; and market surveillance authorities enforce compliance. Any other allocation creates perverse incentives, legal uncertainty, and disproportionate burdens on intermediaries that ultimately harm — rather than protect — consumers by reducing the availability and accessibility of product information.

4.4 Recommendation

We recommend that the Draft Bill explicitly clarify that:

• manufacturers bear exclusive legal responsibility for the accuracy of product-level information (repairability, sustainability, software updates);

• online marketplaces and distributors are limited to display and notice-and-action obligations consistent with the DSA;

• no economic operator may be held liable for information it did not generate and cannot technically verify; and

• the allocation of responsibility follows the model established in existing EU product legislation (Energy Labelling Regulation, ESPR, General Product Safety Regulation).

5. Matters Outside the Scope of Transposition

The Draft Bill also includes provisions on shrinkflation, fear-based advertising, and fossil fuel

advertising restrictions that fall entirely outside the scope of Directives 2024/825 and 2024/1799.

Their inclusion in a transposition instrument raises concerns regarding proportionality and the appropriate use of the TRIS notification procedure.

Conclusion

We respectfully requests that the European Commission carefully assess the provisions of the Draft Bill that exceed the scope of Directives (EU) 2024/825 and 2024/1799, and consider issuing a detailed opinion under Article 6(2) of Directive (EU) 2015/1535 to the extent that:

• the mandatory repair co-financing mechanism introduces obligations not foreseen in the fully harmonised framework of Directive 2024/1799;

• the restrictions on sustainability-related terminology conflict with the EU Trade Mark Regulation;

• the provisions on online reviews and dynamic pricing impose technical rules on information society services without adequate justification; and

• the allocation of compliance obligations to intermediaries exceeds the harmonised framework of the Digital Services Act.

We remain available to provide further technical input and to engage constructively with the Commission and Spanish authorities.

ALDELÍS | AVES NOBLES Y DERIVADOS, S.L.

At ALDELÍS, we share the overall objective of moving towards more sustainable consumption, strengthening consumer protection and preventing practices that may be misleading, particularly in environmental matters. However, we believe it is important that the development of the standard takes the following aspects into account:

- **Clarity and legal certainty** regarding what types of environmental claims may be used, under what conditions and with what level of evidence.
- **Consistency with European legislation**, avoiding duplication, overlaps or additional requirements that are not harmonised with other regulatory frameworks on sustainability, environmental information, packaging, labelling or due diligence.
- **Proportionality in obligations**, particularly for sectors such as the food industry, where there are already multiple regulatory requirements regarding food safety, traceability, labelling, quality, packaging and consumer information.

- **Clear criteria for the use of generic terms** such as ‘sustainable’, ‘responsible’, ‘eco’, ‘green’, ‘low impact’, ‘environmentally friendly’ or similar, to avoid differing interpretations.
- **Recognition of existing methodologies, standards and certifications**, so that companies can clearly identify which evidence is valid to support their environmental communications.
- **Sufficient transition periods** in the event that the new obligations require the revision or modification of packaging, labels, marketing materials, websites, product information sheets, customer documentation or internal procedures.
- **Appropriate differentiation between product types**, bearing in mind that obligations relating to the right to repair or planned obsolescence follow a different logic to that of food products.
- With regard to **reduflation**, we consider it important to clarify the scope of information obligations and the division of responsibilities between manufacturers, distributors and points of sale, as well as how this information should be communicated to the end consumer.

In short, we welcome progress towards a framework that promotes more sustainable, transparent and responsible consumption, provided that the resulting obligations are clear, proportionate, harmonised and practicable for businesses.

Forética

Overall assessment of the draft bill

We consider this draft bill to represent a very significant step forward, particularly in combating greenwashing practices and ensuring clear and reliable information on the environmental characteristics of goods and services. We also welcome the inclusion of measures to incentivise the circular economy and promote more sustainable purchasing choices. From our perspective, we have identified some interesting aspects to consider, which we detail below.

Specific comments

1.- In order to avoid unintended consequences arising from the new framework governing environmental claims, it would be advisable to include an explicit reference to the need for the regulation not to discourage the communication of environmental commitments and improvements that are truthful, substantiated and proportionate. This would help prevent *greenhushing* practices, which could slow down the sustainability transition and reduce incentives for companies to communicate their environmental progress in a transparent and credible manner.

2.- As highlighted in Forética's report 'Greentrusting vs Greenwashing: A Roadmap for Responsible Environmental Communication', integrating sustainability into departments that have not traditionally embraced it – such as marketing, sales and advertising – reinforces the organisation's overall understanding of and commitment to these values. This fosters a cohesive corporate culture aligned with sustainability objectives, helping to retain talent and build trust amongst stakeholders – both concepts that would be worth highlighting in the legislation as drivers for businesses.

Specifically, with regard to the second concept, the law links the building of trust to specific issues such as product recall or safety; however, we would suggest emphasising the ability of companies to build trust among various stakeholders when they provide accurate and consistent information about their products and services.

3. It would be important to emphasise the need for transparent information regarding employees' human rights, as this social perspective is becoming increasingly important in consumer decision-making. In cases where measures have been taken to safeguard labour rights, it would be useful to include this information in a clear and visible manner. Consumers' rights are mentioned on several occasions, but we would propose incorporating this aspect.

4. It is important to emphasise the value of campaigns to raise awareness amongst consumers and SMEs, particularly regarding the use of certifications, so that they can make informed decisions. We would suggest including a specific section on the importance of running public awareness campaigns to promote responsible consumption habits. Experience shows that regulation needs to be accompanied by educational measures to bring about lasting changes in behaviour.