Message 103

Communication from the Commission - TRIS/(2026) 2382

Directive (EU) 2015/1535

Notification: 2026/0294/ES

Forwarding of the observations of a Member State (Austria) (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

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1. MSG 103 IND 2026 0294 ES EN 15-09-2026 27-08-2026 AT COMMS 5.2 15-09-2026

2. Austria

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4. 2026/0294/ES - SERV - INFORMATION SOCIETY SERVICES

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Austria wishes to comment as follows on Spain’s preliminary draft law on sustainable consumption:

The Spanish bill consists of three articles and several additional provisions. The first article deals with the amendment to Law No 3/1991, of 10. January on unfair competition partially implements Directive (EU) 2024/825 (Empowering Consumers for the Green Transition Directive, EmpCo Directive), which, amongst other changes, amends Directive 2005/29/EC (Unfair Commercial Practices Directive, UCPD). However, the Spanish bill also defines certain business practices as unfair or misleading in all circumstances. In our view, these definitions unduly specify the general clause set out in Article 5 et seq. of the UCPD, thereby contradicting the principle of full harmonisation enshrined in the aforementioned directives.

Under Article 27(10) of the draft, practices are deemed to be misleading where they consist of the use of a dynamic price system for the marketing of goods or services that are supplied or provided at a specific date without having previously informed the consumer of the use of this system for the same product on the same date, as well as the minimum and maximum price at which it is offered and its complete evolution over time from the beginning of the marketing to the date of delivery or provision. That practice must be classified as a business-to-consumer (B2C) commercial practice within the meaning of Article 2(d) of the UCPD, as it constitutes conduct on the part of a trader which is directly linked to the sale of a product to consumers. B2C business practices are regulated by the UCPD in a fully harmonised manner, meaning that Member States may not adopt measures that are stricter than those laid down in the Directive, not even with the aim of achieving a higher level of consumer protection, unless this is permitted under the Directive itself (see also the Guidance on the interpretation and application of Directive 2005/29/EC, C/2021/9320, 29 December 2021, and the judgment of the Court of Justice of 19 October 2017, Europamur Alimentación, C-295/16, paragraph 39 and the case-

law cited therein). However, a provision such as that contained in Article 27(10) of the Spanish draft is not covered by the UCPD or Directive (EU) 2024/825 or any other relevant Union legal acts (for example, the content of the provision is also not covered by the regulatory powers granted to Member States regarding 'dark patterns' in the field of financial services under Article 16e of Directive 2011/83/EU, as amended by Directive (EU) 2023/2673). The practice set out in Article 27(10) of the draft therefore infringes the principle of full harmonisation established in the UCPD and must be regarded as an infringement of EU law. Furthermore, the provision is also viewed critically in the light of the Digital Fairness Act (DFA) announced by the European Commission, as it may anticipate the content of that legislation.

Irrespective of the scope of the notification, it should also be noted that the Spanish bill contains further specifications of the general clause concerning the prohibition of misleading commercial practices which are not in line with the principle of full harmonisation established in the UCPD.

Firstly, under Article 27(11) of the draft, practices are deemed misleading if they provide consumers or users with misleading information about the environmental or social performance of the product or service, or about factors that affect its service life. This includes, in particular, the practices referred to in points (a) to (l).

Under Article 27(11)(d) of the draft, statements regarding animal welfare that could raise expectations among consumers and that go beyond the benefits derived from the products being marketed, and practices whereby images are used on the packaging of products of animal origin that are neither neutral nor reflect the production system used, are deemed to be misleading. Animal welfare is to be regarded as a social characteristic of a product within the meaning of Directive (EU) 2024/825 (see Recital 3 of Directive (EU) 2024/825). Under Article 6(1)(b) of the UCPD, as amended by Directive (EU) 2024/825, which is transposed in Article 5(1)(b) of the draft, consumers must not be misled on the basis of social characteristics, insofar as this induces them to take a commercial decision that they would not otherwise have taken (case-by-case assessment). A blanket ban on misleading advertising – without a case-by-case assessment – relating to social aspects such as animal welfare, subject to certain conditions, is not covered by the UCPD and therefore contravenes its principle of full harmonisation.

Under Article 27(11)(j) of the draft, practices that mislead consumers into believing that their goods cannot be repaired because they have previously been repaired or inspected by an independent repairer or end-user, or on the basis of false claims that such a repair or an inspection entails safety risks, are deemed to be misleading. Notwithstanding the fact that this is an undesirable practice, which may also constitute a misleading practice within the meaning of the UCPD (see Recital 19 of Directive (EU) 2024/1799), a per se prohibition, such as that provided for in the Spanish bill, without a case-by-case assessment, also contravenes the principle of full harmonisation.

Furthermore, Article 5(6) of the Spanish draft defines the promotion of products or services by content creators on platforms and social media, without their commercial nature being explicitly disclosed, as a form of deceit. EU law already stipulates that the commercial nature of content must not be misrepresented (see, for example, Annex I, point 11, and Article 7(2) of the UCPD; Article 6(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market). The provision in the Spanish draft therefore specifies as misleading those practices which are already classified as such under fully harmonised EU law. Insofar as the scope of the provision in the draft extends beyond the provisions of EU law, this also constitutes a breach of the full harmonisation of the UCPD (and, where applicable, of the full harmonisation and the country-of-origin principle of Directive 2000/31/EC, as well as the Digital Services Act, Regulation (EU) 2022/2065).

In summary, it must therefore be concluded that Article 27(10) and (11)(d) and (j) and Article 5(6) of the Spanish draft contradict the UCPD and must therefore be rejected.

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Notification of Regulatory Barriers

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