Message 301

Communication from the Commission - TRIS/(2026) 1763

Directive (EU) 2015/1535

Notification: 2026/0294/ES

Request for supplementary information from the Commission.

Request for supplementary information - Demande d'informations complémentaires - Žádost o doplňující informace - Ersuchen um ergänzende Informationen - Искане за допълнителна информация - Žádost o dodatečné informace - Anmodning om supplerende oplysninger - Αίτηση συμπληρωματικών πληροφοριών - Solicitud de información complementaria - Lisateabe edastamise palve – Lisätietopyyntö - Zahtjev za dodatne informacije - Kiegészítő információ kérése - Domanda di informazioni complementari - Prašymas pateikti papildomos informacijos - Papildu informācijas pieprasījums - Talba għal tagħrif addizzjonali - Verzoek om aanvullende inlichtingen - Prośba o uzupełnienie informacji - Pedido de informações complementares - Solicitare de informații suplimentare - Žiadosť o ďalšie informácie - Zahteva za dodatne informacije - Begäran om kompletterande upplysningar - Iarraidh ar fhaisnéis fhorlíontach

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2. Commission

3. DG GROW/E/3 - N105 04/63

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

5.

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535 [OJ L 241, 17.9.2015, p. [1.] , the Spanish authorities notified to the Commission (notification 2026/294/ES) on 12 June 2026 the “Preliminary draft law on sustainable consumption” (hereinafter, ‘the notified draft’).
In order to allow the Commission services to complete their analysis under the relevant provisions of EU law, the Spanish authorities are kindly invited to reply to the following request for supplementary information.

I. Protection of Consumers

The Unfair Commercial Practices Directive 2005/29/EC [2](“the UCPD”) requires a case-by-case assessment of the unfairness of commercial practices, unless the commercial practice falls under the scope of Annex I. The transactional decision test is the cornerstone and pre-requisite for the application of all the main UCPD provisions on unfair commercial practices (i.e. Articles 5 to 9). Annex I of the Directive contains the list of those commercial practices which shall in all circumstances be regarded as unfair, without there being a need of assessing the likely impact of the practice on the average consumer's economic behaviour. Consequently, only these commercial practices can be deemed to be unfair without proceeding to a case-by-case assessment that is required pursuant to the general provisions of Articles 5 to 9 of the Directive.
The UCPD is based on the principle of full harmonisation (Article 4). Member States may not adopt, for the purpose of protecting the consumers’ economic interests, stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection, except in specific areas where the Directive allows Member States to

impose stricter requirements such as, for example, financial services.

The Consumer Rights Directive 2011/83/EU [3] ("the CRD") sets out pre-contractual information requirements in its Articles 5 to 8. Article 4 of the CRD indicates that "Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive". One of the derogations from this full harmonisation approach is Article 5(4), which allows Member States to adopt or maintain additional pre-contractual information requirements for contracts other than off-premises and distance contracts. Although the information requirements provided in Article 6 for off-premises and distance contracts are, in principle, exhaustive (maximum harmonisation), in accordance with Article 6(8), Member States can impose additional information requirements in accordance with the Services Directive 2006/123/EC [4] and the eCommerce Directive 2000/31/EC [5] .

Directive (EU) 2024/1799 [6] requires the Commission to establish a European online platform for repair, which will consist of national sections of the Member States that will decide to join the European Platform. Article 7(5) of the Directive indicates that the registration on the European platform must be voluntary for the repairers. In addition, under Article 4(1), the repairers must remain free to provide or not the European Repair Information Form to the consumers. Under Article 13, the Member States must take at least one national measure promoting repair. While the Commission will assess the conformity of the national transposition measures with Directive (EU) 2024/1799 after their adoption and formal notification to the Commission, the Commission services would nevertheless like to use this opportunity to ask for clarifications also regarding some aspects of the submitted draft which concern Directive (EU) 2024/1799.

Specifically, the Commission services would welcome clarifications on:

1. Provision on "fear based" advertising, inserted in Article 27 (other deceptive practices) of the amended Law 3/1991 on Unfair Competition.
Commission services understand that Article 27 of the Law 3/1991 on Unfair Competition covers the prohibited ("blacklisted") commercial practices as per Annex I of the UCPD. Article 27(2), first subparagraph, prohibits making inaccurate or false claims as to the nature and extent of the danger to the personal safety of the consumer and user or his or her family if the consumer or user does not contract the good or service. Article 27(2), second subparagraph, requires such claims (when they are not inaccurate or false) to be accompanied by quantitative or statistical information that allows consumers to make a real assessment of the risk: where such statements, while being true, use exposure to a risk or danger as the main argument for commercial persuasion, they shall incorporate, under conditions of adequate visibility, adapted to the medium in which the communication is made, additional information of a quantitative or statistical nature that allows the consumer or user to assess their frequency, relative impact or proportion. This information should be kept up to date.
Accordingly, Article 27(2), first subparagraph, corresponds to the prohibition under point 12 of Annex I UCPD (making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product). The Commission services understand that the new element added by the draft law is the second subparagraph of Article 27(2). The Commission services also understand that the purpose of this new provision is the protection of the consumers' economic interests. Hence, it is within the scope of the UCPD. Therefore, in light of the full harmonisation principle of the UCPD, the Commission services wish to clarify whether the unfairness of the advertising statements that will not meet the new requirements under Article 27(2), second subparagraph, regarding the additional information to be provided with such statements, would still be assessed on a case-by-case basis in accordance with Articles 5-9 UCPD (i.e. also assessing the likely impact of the commercial practice on the average consumer's economic behaviour).
2. Provision on "shrinkflation", inserted in Article 20 (information needed in the commercial offer of goods and services) of the amended General Law for the Defence of Consumers and Users.

Commission services understand that Article 20 of the amended General Law for the Defence of Consumers and Users covers pre-contractual information requirements, as per Articles 5 and 6 of the CRD. A new provision (Article 20(1)(g)) regulates information to be provided by the seller at the final point of sale when the amount of the product is reduced and this reduction results in an increase in the price per unit of measure, while maintaining the same or similar design on

its packaging. It also provides that this duty to provide information shall be deemed to be fulfilled where the reduction in the quantity packaged, or reduction in the number of packaged units and the price increase resulting from such reduction, is indicated legibly and visibly at the final point of sale for a period of not less than 90 days from the first placing on the market of the product with the new characteristics. Finally, the new provision also requires the manufacturers to inform the retailers of these quantitative changes (subparagraph 3 of Article 20(1)(g)).

To understand the scope of application of these new requirements, the Commission services ask the Spanish authorities to clarify whether they will apply them to sales only in physical shops (which are subject to Article 5 of the CRD and minimum harmonisation) or they also cover distance (online) and off-premises sales which are subject to Article 6 of the CRD. In the latter case, 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 eCommerce Directive 2000/31/EC as provided in Article 6(8) of the CRD.

3. Provisions regarding dynamic price practice inserted in the below mentioned provisions of amended Law 3/1991 on Unfair Competition and amended General Law for the Defence of Consumers and Users.

3.1. Commission services understand that Article 27 of the Law 3/1991 on Unfair Competition covers the prohibited commercial practices as per Annex I of the UCPD. A new provision in Article 27(10) prohibits practices that consist of the use of a dynamic price system for the marketing of goods or services that are delivered or provided on a specific date without previously informing the consumer of the use of that system for the same product on the same date, as well as the minimum and maximum price at which it is to be offered and its complete evolution over time from the beginning of the marketing to the date of delivery or provision.
In light of full harmonisation principle under the UCPD, the Commission services invite the Spanish authorities to clarify whether the main objective of these provisions is protection of the consumers against misleading marketing, and, if that is the case, whether the unfairness of such practices remains to be assessed on a case-by-case basis.
3.1.1 The Commission services understand that the application of the above provision is wide and would apply to the marketing of air services. Article 22 of Regulation (EC) No 1008/2008 (Air Services Regulation, “ASR”) gives airlines the right to freely set air fares. Article 23 ASR requires the final price to at all times be displayed, and the price of ancillary services to be clearly communicated at the start of the booking process. 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?
3.2. The Commission services would also welcome clarifications regarding Article 97 (pre-contractual information on distance and off-premises contracts) of the amended General Law for the Defence 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.
3.2.1. The Commission services would like to clarify the purpose and the interplay of the following two rules of Article 97, paragraph (f) (in Italic, text citation from the draft law):
- information shall be provided that the price has been configured by means of a dynamic or personalised pricing system, based on automated decision-making which must remain unchanged throughout the purchase process, as well as the parameters taken into account in carrying out such price configuration;
- Once the purchase process has started, no price variation can be made at any time for said purchase.
3.2.2. Furthermore, the Commission services would like to understand whether the provisions of Article 97, paragraph (f), concerns only the financial sector products or services or they apply more broadly to all contracts for goods and services.
3.2.3. Finally, the Commission services would like to understand the objectives of these requirements of Article 97, paragraph (f) (in Italic, text citation from the draft law):
- the parameters taken into account in carrying out such price configuration, and the data sources used in cases of procurement of financial sector products or services that under no circumstances be discriminatory or exploit situations

of urgency or necessity.
- for the marketing of goods or services that are delivered or provided on a specific date and that are offered to the consumer in advance, the consumer must be informed of the price or price range applicable at that time, the price or range reasonably estimated for each subsequent contract date until the date of delivery or provision, as well as the average price at which the same good or service has been offered in the previous 30 days. In the case of goods or services offered for sale for the first time, reference shall be made to the average price at which goods or services of a similar nature have been marketed by the same operator within the previous 30 days. In these cases, price variations outside this reference or range may only be established as promotions or discounts, always with a price lower than the absolute minimum price indicated.
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. In the affirmative, 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 eCommerce Directive 2000/31/EC as provided in Article 6(8) of the CRD.
3.3. The Commission services would also welcome clarifications regarding Article 20 paragraph (c) (Information needed in the commercial offer of goods and services) of the amended General Law for the Defence of Consumers and Users: the trader shall provide price information in a clear and comprehensible manner where the price has been set up on the basis of a dynamic pricing system or personalised pricing, 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 Articles 6 of CRD.
In the affirmative, 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 eCommerce Directive 2000/31/EC as provided in Article 6(8) of the CRD.
4. Provisions relating to the transposition of Directive (EU) 2024/1799 promoting the repair of goods:

4.1. Article 2(20) of the draft Law 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 shall be prohibited to increase the prices of spare parts when applying them for repairs. […]

Could the Spanish authorities explain in more detail what is the meaning and the purpose of this prohibition?

4.2. Article 3 of the draft Law introduces a co-financing mechanism for the costs of repair as follows:

2. […] In the event that the repair cost exceeds fifty per cent of the sale price of the good on the market, by the same obligated party, or of the price at which the good was last marketed by the same obligated party, if it no longer markets it, this will be the cost to be taken into account for the purposes of applying the contribution provided for in the previous subparagraph.[…]
4. Repairers, who must be registered on the European online repair platform, shall directly deduct the repair cost financed by those obliged under this Article from the European Repair Information Form.
5. […] With a view to ensuring the provisions of this paragraph, those liable for the contribution shall have the right to request from the repairer a copy of the European repair information form provided to the consumer, as well as to request additional information if necessary.

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:

4.2.1. With regard to Article 3(2), how does the financing mechanism apply if the repair costs are less than 50% of the sale price?
4.2.2. With regard to Article 3(5), whether the repairers are obliged to provide the consumers with the European Repair Information Form, if they want to benefit from the financing scheme?

4.3. 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?

5. Provision on "resale of contracts for the provision of goods or services to consumers or end-users", inserted in Article 20 (information needed in the commercial offer of goods and services) of the amended General Law for the Defence of Consumers and Users.

Commission services understand that Article 20 of the amended General Law for the Defence of Consumers and Users covers pre-contractual information requirements, as per Articles 5 and 6 of the CRD. A new provision (last subparagraph of Article 20(1)(c)) regulates the "resale of contracts": "In the event of resale of contracts for the provision of goods or services to consumers or end-users, the final price shall be, at most, the same price at which the contract was purchased, without the possibility of increasing the price for any other type of charge".

The initially notified text only concerned ticket resale ("In the event of resale of tickets for public shows and recreational activities, the final price will be the same price at which the ticket was purchased, being able to increase exclusively according to the Consumer Price Index during the period elapsed since the purchase of said ticket"). The new notified provision appears to have a broader scope; however, the accompanying report continues to refer only to resale of tickets for public shows.

Therefore, 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 it also covers the resale of other goods and services. In addition, the Commission services would appreciate a clarification whether the provided limitation on the resale price applies only to the resale by businesses (professionals), i.e., only in business-to- consumer context, or to any resale.

II. Information Society Services

1. 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 as per the meaning of Directive 2000/31/EC.

In the affirmative, the Commission services would like to receive further information on:
a. whether the notified draft would apply to providers of information society services established in the territory of other Member States than Spain;
b. in the affirmative, 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 the case law C-376/22 of the Court of Justice;
c. what would be the obligations applicable to information society services resulting from the notified draft;
d. 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.

2. 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.

In the affirmative, the Commission would welcome more information on:
a. the intended interplay between the notified draft and the Regulation (EU) 2022/2065 in view of its maximum harmonisation effect;
b. the concrete obligations for providers of online platforms as defined in Regulation (EU) 2022/2065 resulting from the notified draft;
c. the legal consequences of the notified draft in relation to the obligations for intermediary services as defined in Regulation (EU) 2022/2065;
d. the system for supervision of compliance and enforcement of the above obligations and in particular whether non-compliance would result in the imposition of fines or other types of sanctions or penalties, and the intended interplay with Chapter IV of Regulation (EU) 2022/2065.

III. Air transport

1. Application of provisions to air services and interaction with Regulation (EC) No 1008/2008

In addition to the application of dynamic pricing to air services (section 3.1.1. above), the Commission services also request clarifications in relation to specific provisions applicable to air transport.

a. Introduction of a price cap in emergency situations
The draft law introduces in a new Article 20b of the General Law for the Defense of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, of 16 November, a prohibition on increasing final prices above the maximum price offered in the 30 days preceding a civil protection emergency or unforeseen emergency situation, with the relevant emergencies defined in separate legislation covering natural disasters and equivalent events. The provision includes a corrective mechanism applicable when the maximum price exceeds the period average by 50%, and an alternative reference based on the previous year's average price updated by the consumer price index for seasonal services.

Article 22 ASR gives the right to airlines to freely set prices, 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.

b. Advertising restrictions grounded on sustainability concerns
The draft law introduces a limitation on the advertising of (i) energy products composed exclusively of fossil-derived components with no participation of renewable elements, and (ii) transport services propelled exclusively by fossil fuels, provided that alternatives fully or partially powered by non-fossil energy sources exist for the same route and whose estimated journey time does not exceed that of the equivalent service by more than two and a half hours.

Since 1 January 2025, fuel suppliers at EU airports are required under Regulation (EU) 2023/2405 (ReFuelEU Aviation) to provide a minimum share of 2% of Sustainable Aviation Fuel (SAF), increasing every five years to a minimum share of 70% of SAF by 2050. Air carriers using a percentage of SAF in the fuel blend would qualify as “partially powered by non-

fossil energy sources".

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.

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?

Since the SAF mandates are an average for the fuel supplier, SAF may not be available at all EU airports, especially as fuel suppliers can choose where to provide SAF until 2034 at which point there should be SAF at every Union airport. In addition, SAF may be blended in airport fuel tanks, or even in pipelines, but in most cases cannot be traced to a specific flight.

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.

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 the fact that neither the airports nor the airlines are making the decision which airports the fuel suppliers supply with SAF.

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 (and what) objective, how it is non-discriminatory, on what basis the benchmark of 2 and half extra hours was taken and how the measure is not more restrictive than necessary to relieve 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.

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).

c. Second Additional Provision – Requirement to notify the Commission on air transport pricing measures

The draft law 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 Spanish authorities are kindly invited to reply by 16 July 2026.

[1] OJ L 241, 17.9.2015, p. 1.

[2] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') .

[3] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

[4] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

[5] 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 ('Directive on electronic commerce').

[6] 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.

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