Message 201

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Forwarding of the response of the Member State notifying a draft (Spain) to comments (5.2) of Austria.

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5.

6. REPORT OF THE DIRECTORATE-GENERAL FOR CONSUMER AFFAIRS REGARDING THE REQUEST FOR ADDITIONAL INFORMATION SUBMITTED BY AUSTRIA IN THE CONTEXT OF THE TRIS NOTIFICATION OF THE PRELIMINARY DRAFT LAW ON SUSTAINABLE CONSUMPTION

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 Law on Sustainable Consumption' (hereinafter, the APL).
Following this notification, on 31 August 2026, the Directorate-General for Consumer Affairs received a letter from Austria requesting further information (notification 2026/294/ES) regarding the APL.
Accordingly, the additional information requested in notification 2026/294/ES is provided below:
• General comments.
Austria maintains that the Spanish draft law defines certain commercial practices as unfair or misleading in all circumstances, and considers that these definitions unduly give specific effect to the general clause contained in Articles 5 et seq. of the UCPD, thus contradicting the principle of full harmonisation enshrined in the aforementioned directives.
The Preliminary Draft Law on Sustainable Consumption faithfully transposes into Article 27 of Law 3/1991 of 10 January on Unfair Competition (hereinafter the LCD) the new conducts that Directive (EU) 2024/825 incorporates into Annex I of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices (hereinafter the UCPD). The LCD thus reproduces, almost word for word, the practices set out in Annex I to the UCPD, whether in their original wording, as amended by Directive (EU) 2019/2161, or as amended by Directive (EU) 2024/825.
In particular, of the twelve provisions set out in Article 27(11), ten reproduce, in the same order and with the same content, the new points that Directive (EU) 2024/825 introduces to Annex I of the UCPD; only points (d) and (j) constitute

additions that do not appear verbatim in that Annex.
As the very structure of Austria's observations makes clear, the criticism concentrates, in fact, on four very specific provisions – Article 27(10), Article 27(11)(d) and (j) and Article 5(6) of the LCD – which Spain considers to be compatible with EU law for the reasons set out below in response to each observation.
• Dynamic pricing (Article 27(10)).
Austria points out that according to Article 27(10) of the draft law, 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. In its view, this practice should be classified as a commercial practice by businesses in their dealings with consumers (B2C) within the meaning of Article 2(d) of the UCPD, as it constitutes conduct by a trader directly related to the sale of a product to consumers. Austria further notes that B2C commercial practices are regulated by the UCPD in a fully harmonised manner, such that Member States may not adopt measures stricter than those laid down in the Directive, even with the aim of achieving a higher level of consumer protection, unless the Directive itself so permits (citing in this regard the Guidelines on the interpretation and application of Directive 2005/29/EC, C/2021/9320, of 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). Austria submits, however, that a provision such as that contained in Article 27(10) of the Spanish draft law is not covered by the UCPD, nor by Directive (EU) 2024/825, nor by any other relevant EU legal act. It further notes that it is not covered by the regulatory powers granted to Member States in relation to 'dark patterns' in the field of financial services under Article 16e of Directive 2011/83/EU, as amended by Directive (EU) 2023/2673. Therefore, in its view, the practice set out in Article 27(10) of the draft law infringes the principle of full harmonisation under the UCPD and should be considered a breach of EU law.
Finally, Austria adds that the provision is also viewed critically in the light of the forthcoming Digital Fairness Act announced by the European Commission, insofar as it could pre-empt its content.
Spain does not share Austria's conclusion that Article 27(10) of the LCD violates the principle of full harmonisation under the UCPD.
Although, for reasons of systematic coherence, the provision is included in the LCD, its purpose is not consistent with the spirit or scope of the UCPD: the LCD is not merely a law transposing that Directive, but contains numerous additional elements aimed at pursuing other objectives of general interest.
Indeed, the measure pursues 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-setting systems. The use of algorithmic mechanisms capable of continuously adjusting the price of a good or service creates an information asymmetry between businesses and consumers, stemming from the opacity of the system itself, and as a result of which consumers are unaware that the price in question forms part of an automated process of continuous variation. This objective of ensuring digital transparency in dynamic pricing systems is supported by Articles 5 and 10 of Directive 2000/31/EC, which do not constitute an exhaustive list (numerus clausus) of information obligations, and has subsequently been reinforced by Regulation (EU) 2022/2065 (Digital Services Regulation) and by EU legislation on artificial intelligence.
Furthermore, the obligation is proportionate, since it does not require the disclosure of the algorithm used, the mathematical models employed, or the internal weighting criteria – which remain protected as trade secrets – but only of the objective elements of the procurement process (use of the system and price range) that enable consumers to understand the economic context of their decisions. The measure thus fully preserves the freedom to conduct a business recognised by Article 16 of the Charter of Fundamental Rights of the European Union and complies with the principle of proportionality set out in Article 52(1) thereof, without in any way restricting the freedom of the business to set or modify their prices.
• Article 27(11).
Irrespective of the scope of the notification, Austria also notes that the Spanish draft law contains further specifications of the general clause concerning the prohibition of misleading commercial practices which, in its view, are not in line with the principle of full harmonisation established under the UCPD.
Firstly, Austria notes that, under Article 27(11) of the draft law, practices are deemed misleading if they provide consumers or users with misleading information regarding the environmental or social performance of the product or service, or regarding factors affecting its lifespan. This includes, in particular, the practices referred to in points (a) to (l).

As indicated, ten of the twelve provisions set out in Article 27(11), – namely points (a), (b), (c), (e), (f), (g), (h), (i), (k) and (l) – faithfully transpose the new points that Directive (EU) 2024/825 adds to Annex I of the UCPD concerning generic or partial environmental claims, emissions offsetting, software updates, durability, reparability and consumable parts. Only points (d) and (j), to which Austria devotes its specific observations, constitute provisions introduced at national level and are addressed below.

• Animal welfare (Article 27(11)(d)).

With regard to 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. Austria acknowledges that animal welfare should be regarded as a social characteristic of a product within the meaning of Directive (EU) 2024/825 (recital 3), and recalls that, in accordance with Article 6(1)(b) of the UCPD, as amended by that Directive and transposed into Article 5(1)(b) of the draft law, consumers must not be misled on the basis of a product's social characteristics, in so far as this leads them to take a commercial decision that they would not otherwise have taken (case-by-case assessment). It considers, however, that a general ban on misleading advertising relating to social aspects such as animal welfare, without a case-by-case assessment, is not provided for under the UCPD and is therefore contrary to its principle of full harmonisation.

Spain disagrees with the characterisation of Article 27(11)(d) as a general and unconditional prohibition falling outside the scope of the UCPD. Recital 3 of Directive (EU) 2024/825 expressly recognises that information concerning the social characteristics of a product may relate, among other things, to ethical commitments such as animal welfare, while Article 6(1)(b) of the UCPD, as amended by that Directive and transposed into Article 5(1)(b) of the LCD, expressly includes the social characteristics of the goods or services among the elements in respect of which a misleading action may arise. Article 27(11)(d) does not, therefore, create a category of unfair commercial practice falling outside the scope of the Directive, but rather specifies, in relation to a specific factual scenario with recognised practical implications (claims and images concerning animal welfare on the packaging of products of animal origin), a criterion already encompassed by that provision.

Furthermore, the wording of the provision retains the element of likelihood to mislead, which is characteristic of any misleading practice: namely, that it refers to claims that 'could give rise to' expectations exceeding the benefit generated, and to images that 'are neither neutral… nor faithful' to the production system used. These formulations require an assessment of the circumstances of the specific case and do not constitute an automatic and unconditional prohibition. The provision operates as an interpretative criterion that provides legal certainty regarding the application of Article 6(1)(b) of the UCPD to this type of claim.

• Impossibility of repair (Article 27(11)(j)).

Under Article 27(11)(j) of the draft law, practices that mislead consumers into believing that their products cannot be repaired because they have previously been repaired or serviced by an independent repairer or by the end-user, or that falsely claim that such repair or servicing entails safety risks, are deemed to be misleading. Austria acknowledges that this is an undesirable practice, which may also constitute a misleading practice within the meaning of the UCPD (citing Recital 19 of Directive (EU) 2024/1799), but argues that a per se prohibition, such as that provided for in the Spanish law, without a case-by-case assessment, also contravenes the principle of full harmonisation.

Spain does not agree with the characterisation that Article 27(11)(j) constitutes a prohibition and is incompatible with the principle of full harmonisation. Austria itself acknowledges in its observations that the practice described may constitute a misleading practice within the meaning of the UCPD, expressly citing recital 19 of Directive (EU) 2024/1799, which lays down common rules to promote the repair of goods, and which the Preliminary Draft also transposes in a coordinated manner.

Furthermore, the content of Article 27(11)(j) is already covered by Article 6(1)(e) of the UCPD (which forms part of the original core of Directive 2005/29/EC, rather than the amendments introduced by Directive (EU) 2024/825), which classifies false information regarding the need for a service, part, replacement or repair as a misleading practice. Article 27(11)(j) does not, therefore, introduce a ground for breach of loyalty not provided for in the Directive, but rather adds a criterion for the application of a clause that has already been in force in our legal system since the original transposition of the UCPD. Furthermore, the wording of the provision (which requires that the conduct 'leads consumers to believe' or is based on 'false claims') retains the requirement that the practice be likely to mislead, which is inherent in any practice falling within the scope of Article 6 of the UCPD.

• Content creators (Article 5(6)).

Austria further notes that Article 5(6) of the Spanish draft law 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. Austria points out that EU legislation already stipulates that the commercial nature of content must not be misrepresented (citing point 11 of Annex I and Article 7(2) of the UCPD, as well as Article 6(a) of Directive 2000/31/EC), and considers that the provision in the Spanish draft law is limited, therefore, to specifying as misleading practices, those that are already classified as such under fully harmonised EU law. Austria warns, however, that insofar as the scope of the Spanish provision extends beyond the provisions of EU law, this would likewise constitutes a breach of the full harmonisation achieved by the UCPD (and, where applicable, of the full harmonisation and the country-of-origin principle of Directive 2000/31/EC, as well as of Regulation (EU) 2022/2065).

We agree with Austria that EU law already requires that the commercial nature of content not be masked, and it is precisely for this reason that Article 5(6) of the LCD does not go beyond the scope of full harmonisation achieved by the UCPD, but rather applies that existing requirement to a marketing channel (the promotion of products and services by content creators on platforms and social networks) that presents a particularly high risk of circumvention of that obligation.
Article 5(6) does not, therefore, introduce an autonomous criterion of unfairness, but rather reproduces, with the necessary specificity for its application by the Spanish administrative and judicial bodies, the mandate already contained in Article 7(2) of the UCPD (which qualifies as a misleading omission the failure to identify the commercial intention of a commercial practice when it is not evident from the context) and in Article 6(a) of Directive 2000/31/EC. Given that Austria itself acknowledges that the scope of Article 5(6) does not extend beyond that already covered by those provisions, Spain considers that this clarification satisfies Austria's observation.

• Conclusion.
In summary, Austria considers that Article 27(10), Article 27(11)(d) and (j), and Article 5(6) of the Spanish draft law contradict the UCPD and must therefore be rejected.
In conclusion, Spain considers that the Preliminary Draft Law on Sustainable Consumption faithfully transposes the amendments introduced by Directive (EU) 2024/825 into the UCPD, and that the four provisions of the LCD pointed out by Austria have a specific legal basis: Article 27(11)(d) and (j) and Article 5(6) in the UCPD itself (Article 6(1)(b) and (e) and Article 7) and in other acts of secondary EU law (Directive (EU) 2024/1799 and Directive 2000/31/EC); and Article 27(10) in the national margin of discretion to regulate, with the aim of ensuring transparency in digital markets (in accordance with Articles 5 and 10 of Directive 2000/31/EC and Regulation (EU) 2022/2065), aspects not covered by either the UCPD or Directive (EU) 2024/825.
Spain therefore concludes that none of those provisions restricts the freedom to provide services or the free movement of goods within the internal market.

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