

LEGISLATIVE ACT

## Commission Recommendation on combating online piracy of sports and other live events



### Analysis

The Recommendation is to be welcomed insofar as it reinforces the fight against commercial-scale piracy of unauthorised live retransmissions of sports and other live events. As it is a recommendation, its effectiveness will depend on the willingness of the Member States to implement it. Therefore, the Commission envisages a review of the situation by 17 November 2025 at the latest, in the event that action at EU level is necessary.

## Online piracy and the position of the European Commission: recommendations on how to combat it more effectively

On 4 May 2023, the Commission adopted a **Recommendation on combating online piracy of sports and other live events**.

This Recommendation is a response to the Union's wish to protect sporting events, as evidence shows an increase in unauthorised retransmissions of these events, which is a concern, as it may cause a significant loss of revenue for both organisers and broadcasters, as well as infringe rights that are protected by the legal order.

As this is a non-harmonised area, it is the Member States who must put in place effective measures against piracy. In particular, Member States and stakeholders are encouraged to deploy existing remedies against copyright infringements which take into account the specific features of live broadcasts. This Recommendation supplements Regulation (EU) 2022/2065.

The three main issues covered by this instrument are:

- 1) Rapid processing of notifications concerning live events:** providers of data hosting services other than online platforms are encouraged to cooperate with rightsholders concerning the live broadcasting of sporting events by developing technical tools to facilitate the processing of notifications, such as application programming interfaces.
- 2) Injunctions:** Member States are encouraged to seek injunctions against operators of unauthorised retransmissions, as well as against providers of intermediary services whose services are misused by third parties.
- 3) Commercial offers and awareness:** the aim is to make commercial offers more attractive, available and affordable for end users. Member States are also urged to advise consumers of the existence of legal offers to enjoy such content.

Furthermore, the Recommendation strengthens monitoring and cooperation between the competent national authorities of Member States and between the rightsholders and intermediaries in order to combat illegal retransmissions, given the cross-border nature of piracy.

### FURTHER INFORMATION

-  Commission Recommendation of 4 May 2023 on combating online piracy of sports and other live events.
-  Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

LEGISLATIVE PROPOSAL

Proposal for a  
Directive as regards  
empowering  
consumers for the  
green transition  
through better  
protection against  
unfair practices and  
better information

The Council adopts its position on the  
Commission's Proposal on empowering consumers  
in the context of the Green transition

On 3 May 2023, the Council of the European Union adopted its position ("negotiating mandate") on the **Commission's Proposal for a Directive, of 30 March 2022, as regards empowering consumers for the green transition through better protection against unfair practices and better information**, amending Directive 2005/29/EC, concerning unfair business-to-consumer commercial practices and Directive 2011/83/EU, on consumer rights.

The aim of this new regulatory instrument is to contribute to a circular, clean and green economy by addressing the problem of "greenwashing" and establishing instruments to prevent consumers from being misled about the reparability and durability of products when entering contracts.

The Council's negotiating mandate seeks to strengthen consumer rights, prohibits generic environmental claims and introduces the "Union Harmonised Graphic Format" to assist consumers in recognising commercial guarantees of durability. It also includes other new features such as:

- 1) Allowing **sustainability labels** that are based on an official certification scheme, are registered as national or EU certification marks or have been established by public authorities.
- 2) Improving **comparability** between products through the inclusion of information on durability and planned obsolescence or social aspects such as working conditions of the employees involved, respect for human rights, and animal welfare, among others.
- 3) Providing information about the **incompatibility** of certain products with parts from third-party producers.





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**Proposal for a  
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**Analysis**

The Proposal for a Directive is one of the initiatives stemming from the European Green Pact, with the ultimate goal of achieving climate neutrality by 2050, and goes hand in hand with other Commission proposals presented last March, such as the [Proposal for a Directive on common rules promoting the repair of goods](#) and the [Proposal for a Directive on substantiation and communication of explicit environmental claims](#). Their impact will depend on the final scope of the consumer rights that are recognised with the potential for legal enforcement, and whether they are new in relation to those already included in Directive 2005/29.

- 4) Obliging traders to inform consumers of the existence and conditions of after-sales or repair services.
- 5) Extending the **transposition deadline** set by the Commission from 18 to 24 months to allow Member States sufficient time to make the necessary changes to their legal systems.

The European Parliament's position at first reading has not yet been adopted, as after a debate in the plenary session on 9 May it was agreed to refer the proposal back to the Internal Market and Consumer Protection Committee of the European Parliament (IMCO Committee) for further analysis in view of divergences between parliamentary groups. It is difficult to assess whether it will be adopted by the end of the legislature in 2024.



**FURTHER INFORMATION**

- ⑦ Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information [COM (2022) 143 final].
- ⑦ Negotiating mandate of the Council of the European Union [ST 9008 2023 INIT].
- ⑦ Report of the European Parliament's Committee on the Internal Market and Consumer Protection of 12 April 2023.
- ⑦ Pérez-Llorca's Brussels Insights – March 2023.

CJEU JUDGMENT

**Judgments of the  
General Court of 10  
May in Joined Cases  
T-34/21 and T-87/21,  
*Ryanair v Commission*  
(*Lufthansa -  
COVID-19*) and in Case  
T-238/21, *Ryanair v  
Commission* (*SAS II -  
COVID-19*)**

**Aid to the aviation sector as a result of COVID: The  
General Court sides with Ryanair and annuls several  
Decisions of the European Commission**

These two judgments upheld the appeals brought by Ryanair against two Decisions of the European Commission. The Decisions in question held that the State aid granted by Germany and Denmark and Sweden in favour of Lufthansa and SAS AB, respectively, in the context of the COVID-19 pandemic was compatible with the internal market.

In the Lufthansa case, the General Court annulled the Commission's Decision, holding that:

- 1) The Commission did not examine whether Lufthansa could have raised a significant part of the financing it needed on the capital markets, and, therefore, the Commission did not take into account all the relevant circumstances which must be taken into account when assessing whether the contested measure complies with paragraph 49(c) of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.
- 2) The Commission failed to comply with the provisions of the Temporary Framework insofar as it did not require the inclusion of an upward adjustment mechanism for the State's remuneration or other similar mechanisms in the recapitalisation or Silent Participation II, at the time of the conversion of the latter into equity.
- 3) The Decision did not provide adequate grounds in circumstances where it was necessary to state the reasons why the divestiture of flight slots should be remunerated and why this would not reduce the attractiveness of the slots and, consequently, the effectiveness of the related commitments offered by Germany to entirely eliminate potential competition concerns arising from the granting of the aid. Nor was any reason given as to why the exclusion of competitors who already had a base at Frankfurt and Munich airports during the first stage of the slot divestiture process did not affect effective competition in the relevant markets.





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### CJEU JUDGMENT

## Judgments of the General Court of 10 May in Joined Cases T-34/21 and T-87/21, *Ryanair v Commission* (*Lufthansa - COVID-19*) and in Case T-238/21, *Ryanair v Commission (SAS II - COVID-19)*



### Analysis

The two judgments of 10 May analysed above, together with the most recent judgment of 24 May 2023 in Case T-268/21, *Ryanair v Commission (Italy; aid scheme; COVID-19)* demonstrate that the General Court considers that there are limits to recognising the compatibility of aid even in exceptional circumstances such as COVID-19. Adequate monitoring of aid by the Commission preserves the internal market.

In addition, in the SAS II case, the General Court upheld the appeal and annulled the Commission's Decision due to its failure to implement the Temporary Framework, and, in particular, for not requiring a restructuring plan or an equivalent measure. The Court provided the following rationale regarding the control exercised by the General Court, and the Commission's link to the Temporary Framework:

- 1) The General Court's judicial control over the Commission's exercise of its discretion in assessing State aid is limited to checking compliance with the rules of procedure and motivation.
- 2) Temporary Frameworks or State aid Guidelines are instruments or rules of conduct that limit the Commission's discretion, and, in principle, the Commission is obliged to respect them.
- 3) It is possible for the Commission, in exceptional circumstances, to depart from these rules of conduct when authorising State aid by directly applying Article 107(3) TFEU.
- 4) In this case, however, the Commission had not proven the existence of exceptional circumstances that could justify the direct application of Article 107(3)(b) TFEU, thereby rendering the Temporary Framework applicable. In this context, the Commission had not sufficiently demonstrated that the measure under scrutiny could be justified under the rules of the Temporary Framework, which is considered an infringement by not requiring a restructuring plan or equivalent measure.



### FURTHER INFORMATION

- ⑦ Judgment of the General Court of 10 May 2023 in Joined Cases T-34/21 and T-87/21, *Ryanair v Commission (Lufthansa - COVID-19)*.
- ⑦ Judgment of the General Court of 10 May 2023 in Case T-238/21, *Ryanair v Commission (SAS II - COVID-19)*.
- ⑦ Judgment of the General Court of 24 May 2023 in Case T-268/21, *Ryanair v Commission (Italy - aid scheme - COVID-19)*.