



## PRESS RELEASE No 97/26

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Judgment of the Court in Case C-234/25 | Sky Österreich Fernsehen

### **Streaming subscriptions: the right of withdrawal cannot be excluded where the service is designed to adapt to the user's behaviour**

The Austrian commercial television company Sky Österreich offers the streaming subscriptions 'Sport & Live TV' and 'Fiction & Live TV' in Austria.

To be able to sign up to one of those subscriptions online, the customer must accept a contractual term according to which the performance of the contract will begin before the 14-day withdrawal period expires and, as a result, the customer loses the right of withdrawal (a right which a customer usually has in the case of a contract concluded at a distance).

A consumer protection association is challenging that term before the Austrian courts. It is of the view that streaming subscriptions constitute the supply of a 'digital service', with the result that the right of withdrawal cannot be excluded.

Sky Österreich, on the other hand, contends that it provides 'digital content'. It takes the view therefore that the consumer can lose the right of withdrawal if he or she consents to the performance of the contract beginning before the withdrawal period expires.

The Austrian Supreme Court asked the Court of Justice to interpret the Consumer Rights Directive <sup>1</sup> in relation to this issue.

The Court answers that the supply of a streaming service by which the customer can access, through a hyperlink or a digital application, digital data stored on a server in order to view them live, on demand, or offline after they have been downloaded to the memory of their own device, does not constitute the supply of digital content but rather the supply of a digital service, where the offering is of a dynamic nature which goes beyond the mere stable and, as the case may be, continuous provision of specific content.

That is the case, in particular, where, on the basis of a monitoring of the content which the consumer has accessed, playlists or lists of favourites, the offering is designed to adapt to the consumer's individual behaviour or expectations or to influence the manner in which the customer uses the services concerned, for example by recommending specific content. <sup>2</sup>

**In the present case**, and subject to verification by the Austrian Supreme Court, **it appears that the streaming service offered by Sky Österreich must be classified as a digital service**, given the dynamic nature of the offering. <sup>3</sup> **Consequently, the right of withdrawal cannot be excluded** and the customer thus has an appropriate period for reflection to examine whether the subscription meets his or her expectations.

The provider's interests are sufficiently protected. A customer who exercises the right of withdrawal after having asked the provider to begin performance of the contract during the withdrawal period must pay **appropriate compensation**. That compensation is, in principle, to be calculated on the basis of the period of use but may also, where appropriate, be calculated on the basis of the economic value of the content viewed.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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<sup>1</sup> [Directive 2011/83/EU](#) of the European Parliament and of the Council of 25 October 2011 on consumer rights, as amended by [Directive 2019/2161](#).

<sup>2</sup> The distinction must therefore be drawn on the basis of the degree of the provider's involvement during the supply of the digital data in question.

<sup>3</sup> Sky Österreich's streaming service features a great variety of content, offered in the form of different subscriptions tailored to specific consumer profiles and a dedicated infrastructure to access that content. The offering is generally updated and the user receives personal recommendations based on his or her behaviour. The user is not offered mere one-off access to a specific piece or pieces of content, but can access, at his or her discretion, a variety of content. The content available may be adjusted continuously by Sky Österreich. Moreover, that content is accompanied by technical features that are likely to influence the way in which the user uses the service.