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UNFAIR COMPETITION IN EUROPEAN SUPER LEAGUE COMPANY CASE

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Abstract: *European Super League company case before the Court of Justice of the European Union will have a great impact on European economy, market and competition. The common rules on competition are one of the basic parts of the Treaty on functioning of the European Union. They provide prohibition of all actions that are incompatible with the internal market in the European Union. The very establishment of the Super League in football caused a lot of attention on the international level and triggered specific reactions from FIFA and UEFA. The decision of the Court of Justice of the European Union in this procedure is one of the first where the European Union market law and law on competition affects the sport in general. The most important parts of this decision, reflects not only on the legal aspects of sports in the European Union and the internal acts of international sports entities, but also deeply penetrates into commercial law and economic principles that affect the functioning of international sports competitions. For this reason, in this paper is used case study method for examining in-depth, detailed impact of this decision on internal market of the European Union.*

Keywords: *Super League company, FIFA, UEFA, Court of Justice of the European Union, unfair competition*

JEL classification: *K21*

INTRODUCTION

The creation of monopolies and unfair competition are not rare phenomena in the market and have become among the first to be subject to legal regulation and sanctions in Europe. According to the provisions of Paris Convention for the Protection of Industrial Property (Paris Convention, 1883), any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition (Article 10(2) of Paris Convention). Unlike perfect competition, whereby a large number of sellers operate in the market, a market structure of monopoly is characterised by the existence of one single producer of a product, who provides all the buyers in the market (Nevo-Ilan, 2007). Free competition between enterprises is considered the best means of satisfying

supply and demand in the economy and of serving the interests of consumers and the economy as a whole (World Intellectual Property Organisation, 1994). However, where there is competition, acts of unfair competition are liable to occur.

In accordance to the Treaty on the functioning of the European Union (Consolidated version of the Treaty on the functioning of the European Union, 2012), All agreements among undertakings, decisions made by business associations, and coordinated practices that could influence trade between Member States and aim to prevent, restrict, or distort competition in the internal market are forbidden (Article 101 of the Treaty on the functioning of the European Union). This specifically pertains to agreements that: directly or indirectly establish purchase or selling prices or other trading conditions; restrict or regulate production, markets, technical advancements, or investment; divide markets or sources of supply; impose different conditions on similar transactions with other trading parties, thus disadvantaging them competitively; condition the conclusion of contracts on the acceptance by other parties of additional obligations which, by their nature or under commercial norms, are unrelated to the subject of these contracts (Article 101(a, b, c, d, e) of the Treaty on the functioning of the European Union). These agreements or decisions are rendered null and void automatically. Any misuse by one or more companies of a dominant position within the internal market or in a significant portion of it are forbidden as inconsistent with the internal market to the extent that it may influence trade between Member States (Article 102 of the Treaty on the functioning of the European Union). The competition policy of European Union strives three goals: the effectiveness of the competition has to be maintained; the fair competition has to be ensured between the competitors; and it should conduce the uniting of separate markets to one free market through the harmonisation of their competition policies (Kukrus & Kaabel, 2004). In the European Union, unfair competition law is not fully harmonised, because the Unfair commercial practices Directive (Directive 2005/29/EC, 2005), harmonises the approach to unfair practices in business-to-consumer relations; the Directive on misleading and comparative advertising (Directive 2006/114/EC, 2006), sets forth harmonised rules in the field of advertising; and the protection of undisclosed know-how and business information has been harmonised in the Trade secrets Directive (Directive 2016/943, 2016), (Senfleben, 2024).

In the field of sports, the European Union aids in promoting European sports concerns, considering the unique aspects of sports, its foundations in voluntary involvement, and its social and educational roles (Article 165(1) of the Treaty on the functioning of the European Union). Therefore, the Treaty on the functioning of the European Union brings sport within the explicit reach of the founding treaties for the first time (García & Weatherill, 2012). The European Union's actions focus on, among other things, fostering the European aspect of sport by encouraging fairness and transparency in sporting events, fostering cooperation among sport governing bodies, and safeguarding the physical and moral integrity of sportsmen, particularly the youngest one (Article 165(2) of the Treaty on the functioning of the European Union). The European Union and its Member States promote cooperation with third countries and relevant international organisations in education and sport (Article 165(3) of the Treaty on the functioning of the European Union). The European Union institutions and Member States are supporting the economic aspect of sport through their policies and dialogue.

The European Commission consistently engages in Europe and globally to create a more economically dynamic society through sport, while emphasising the importance of reinforcing connections with sports organizations and enterprises.

The sport economy as a whole is not a separate statistically measured sector, but is part of various other industries and economic sectors. From an economic point of view, sport is an activity which has repercussions in many different areas of the economy (Kleissner & Grohall, 2015). There are cases of competition law decisions relating to sale of sports broadcasting, sale of tickets, sports betting, sale of sports equipment and sales of merchandise (For example: European Commission, 23 July 2003, Case 37.398, *Joint selling of the commercial rights of the UEFA Champions League*, OJ 2003 L 291/25; Case No. 1342/5/7/20 *Sportradar AG and Another v Football Data-Co Limited and Others*; on 4 June 2024, Ticombo, a ticketing marketplace, lodged an antitrust complaint with the European Commission alleging that UEFA abuses a dominant position with its football event ticket resale policy). The Decision of the European Union (Decision 2003/778/EC, 2003), relates to the rules, regulations and all implementing decisions taken by UEFA and its members concerning the joint selling arrangement regarding the sale of the commercial rights of the UEFA Champions League, a pan-European club football competition. In Decision it was concluded that UEFA's joint selling arrangement results in enhanced production and distribution by developing a quality branded league-centric product sold through a unified point of sale. Also, the joint selling of the media rights to the UEFA Champions League by UEFA is unlikely to eliminate competition in respect of a substantial part of the media rights in question. UEFA is the exclusive, absolute legal and beneficial owner of the commercial rights in all competitions. In Europe, the monopolistic tendency is prevalent in professional sports, where a pyramid structure is often employed with the governing body positioned at the apex, enjoying sole oversight over their respective sports' international or national competitions (<https://rb.gy/p2u0jn>, 2025). Consequently, the parties interested in the sports industry have a monopoly on sporting events and tournaments, which leads to the deprivation of other parties from competition and the provision of competitive prices and a better product, and as a result, the parties that acquire the rights of these events monopolise these sporting events and the spectators (Kissswani, 2020).

This issue has come to the forefront of the attention of a company founded at the initiative of some of the biggest football clubs in Europe, with the aim of challenging the dominant position of the Federation of International Football Associations and the Union of European Football Associations. The European Super League was established in accordance with national regulations in Spain, at the initiative of a group of established professional football clubs in Spain (Atletico Madrid, Barcelona, Real Madrid), Italy (Milan, Inter, Juventus), and the United Kingdom (Arsenal, Chelsea, Liverpool, Manchester City, Manchester United, Tottenham). European Super League company intended to launch a project for a new international professional football competition called the Super League. To this end, the establishment of three more companies was planned, responsible first for the financial, sporting and disciplinary management of the Super League after its launch, then for the use of audiovisual rights associated with this competition, and finally for the exploitation of other commercial assets associated with this competition.

The establishment of such a competition caused stormy reactions from football organisations at the European (the Union of European Football Associations) and world level (the Federation Internationale de Football Association). The Federation Internationale de Football Association is a private association founded in Paris in 1904, registered in the Commercial Register in Zurich in accordance with Swiss regulations, with its headquarters in Zurich. The tasks of the Federation Internationale de Football Association (FIFA) include the promotion of football, the organisation of its own international competitions and the drawing up of rules and regulations governing football. The Federation Internationale de Football Association (FIFA) has 211 member associations and has recognised six existing confederations. The Union of European Football Associations is a private association, founded in Switzerland in 1954, registered in the Commercial Register of Vaud in Switzerland, in accordance with its regulations. Its headquarters are in Nyon, Switzerland, and it is a non-profit, public interest, politically and religiously neutral entity. Its governing bodies are the UEFA Congress, the UEFA Executive Committee, the UEFA President and the UEFA judicial bodies. In addition, there is an administrative body that manages, under the jurisdiction of the UEFA General Secretary. The Union of European Football Associations is one of six regional football confederations recognised by the Federation Internationale de Football Associations and has 55 affiliated European national associations. It is the governing body of football in Europe.

Because of the reactions of FIFA and UEFA, the European Super League company, initiated proceedings before the Commercial Court in Madrid, claiming that the rules of FIFA and UEFA on the approval of competition and the use of media rights are contrary to the regulations of the European Union. This Court in Madrid expressed certain doubts about this lawsuit, among other things, due to the fact that FIFA and UEFA have a monopoly on that market. Therefore, in order to resolve this issue, the Spanish court sent a request for preliminary proceedings to the Court of Justice of the European Union.

THE LAUNCH OF THE SUPER LEAGUE AND THE REACTIONS OF FIFA AND UEFA

Within the elite ranks of competitions in Europe, there has always been a tendency for the strongest clubs to participate, both because of the quality of the matches, adequate media attention and, of course, greater financial income from ticket sales and media rights. Thus, although there is a romantic myth that the European Cup was developed for sporting reasons, power, nationalism and money were also significant factors (Doidge, Nuhurat & Kossakowski, 2023). Ever since 1955, when the European Cup was founded as the strongest football club competition in Europe, there have been individual clubs that have participated by invitation (the champions of Poland, Scotland, Yugoslavia, the Netherlands, Austria, Switzerland, Portugal, Hungary did not participate, but teams by invitation). On 4 September 1955, the first match in the then newly formed competition was played between Sporting Lisbon and Partizan Belgrade, with a 3–3 draw. This competition, together with the national leagues, maintained and increased the power of elite clubs. The competition also reinvigorated the power of UEFA, which had been founded only a year earlier. In the following years and decades, this was reflected in the establishment of new competitions, the Inter-Cit-

ies Fairs Cup in 1955, the Cup Winners Cup in 1960, and the UEFA Cup in 1971. The European Cup was renamed the Champions League in 1992, while the Cup Winners Cup ceased to exist after 1999. The UEFA Cup was renamed the Europa League in 2009, and UEFA established a new competition, the Conference League, in 2021. This last competition is important for champions of countries that do not have a significant football tradition, economic power and quality, because if they are eliminated from the Champions League qualifiers, they have the opportunity to qualify for this consolation competition. However, according to the financial allocations, it is clear which competition is the most important. It is the Champions League that would be most affected by the establishment of the Super League, as a new elite competition in football.

The formation of a new elite football competition is the main goal of the Super League, i.e. the establishment of the first European competition independent of the Union of European Football Associations, which is held every year and in which football players and clubs of the highest sporting level participate, including clubs that are permanent members of the Super League and other clubs that qualify for that competition. This competition does not prevent the participation of participating clubs in their national competitions and domestic leagues. The founding clubs had previously notified FIFA and UEFA that they had established a new professional football competition. The other motivations behind the attempt for the formation of the Super League can be financial gain; financial security; familiarity with the closed league model; and the decline of competitive balance in European men's football (Brannagan, Scelles, Valenti, Inoue, Grix & Perkin, 2022).

On January 21, 2021, FIFA and UEFA issued a statement (<https://rb.gy/4rkyed>, 2025), in which they once again reiterated and strongly emphasised that such a competition would not be recognised by either FIFA or the confederation. Any club or player involved in such a competition would therefore be prohibited from taking part in any tournament organised by FIFA or the respective confederation. In accordance with the regulations of FIFA and the confederations, every competition must be organised or acknowledged by the appropriate authority at their respective level, with FIFA overseeing the global level and the confederations managing the continental level. In this regard, the confederations acknowledge the FIFA Club World Cup, both in its existing and revised format, as the sole worldwide club competition, whereas FIFA acknowledges the club competitions managed by the confederations as the exclusive continental club competitions. The fundamental principles of sporting merit, solidarity, promotion and relegation, and subsidiarity form the basis of the football pyramid that guarantees football's worldwide success and are thus incorporated in FIFA and confederation statutes. Football has a rich and prosperous history due to these foundations. Participation in continental and world competitions should always be achieved on the field.

This statement is further supported by a joint statement (<https://tinyurl.com/2w-wnpnn9>, 2025), from UEFA, the English Football Association, the English Premier League, the Royal Spanish Football Federation, Spain's La Liga, the Italian Football Federation and Italy's Serie A, which emphasises the awareness that some English, Spanish, and Italian clubs might be preparing to declare the formation of a closed, Super League. It was emphasised that if this occurs, the signatories of the statement, along with FIFA and all its affiliates, will stay united in their attempt to halt this selfish initiative, which is driven by the self-interest of a small number of clubs when society

requires unity more than ever. Every possible measure will be taken into account, at every level, including judicial and sporting, to stop this from occurring. Football relies on transparent competitions and sporting achievement, and it must remain so. As stated earlier by FIFA and the six confederations, these clubs will be excluded from taking part in any other competitions at the domestic, European, or world level, and their players may be prohibited from representing their national teams. Appreciation was conveyed to clubs in other nations, particularly French and German clubs, that chose not to participate in this competition. An invitation was sent to all football enthusiasts, supporters, and politicians to unite in opposing such a project if it were to be revealed. It was noted that this ongoing personal interest of some individuals has lasted too long and needs to end.

It is for these reasons that the European Super League company filed a request for regular proceedings and a request for the determination of interim protective measures in *ex parte* proceedings against UEFA and FIFA.

PROCEEDINGS BEFORE THE COMMERCIAL COURT IN SPAIN

On April 18, 2021, an unfair competition dispute (Madrid Commercial Court no. 17, 20 April 2021, no. 14/2021, European Super League Company S.L.), was initiated before the Commercial Court No. 17 in Madrid, Spain, initiated by the company European Super League. Namely, this company filed an ordinary lawsuit and a request for exemption from the *inaudita parte* prohibition in antitrust matters against the Federation of International Football Associations (FIFA) and the Union of European Football Associations (UEFA). Already on April 20, 2021, the Commercial Court of Madrid issued an order confirming the interim measures regarding *inaudita parte* and determined that this issue be processed and referred to the Court of Justice of the European Union for preliminary ruling. The Commercial Court to which the request was addressed has determined the possibility of a FIFA and UEFA monopoly regarding the organisation and approval of international competitions. This is because FIFA and UEFA hold 100% of the market share in the organisation of international football competitions and have been organising and exploiting the market for organising football competitions with a monopoly for decades, enacting all regulations applicable to those competitions and assuming the authority to impose sanctions or disciplinary measures against clubs and players participating in those football competitions, as there is currently no competitor in the market for organising and operating football competitions. The Commercial Court stated that the regulations of FIFA and UEFA, along with the enforcement of sanctions and prohibitions linked to them, create a significant barrier to the inclusion of new contenders in the European market for international football club competitions and to the marketing of rights related to these competitions, which are not interchangeable, but inherently and functionally complementary. The Commercial Court highlighted that this monopoly leads to significant economic impacts, since FIFA, along with its member associations and confederations, are the initial proprietors of all rights stemming from the competition. This encompasses various financial rights, audiovisual and radio recordings, reproduction and television broadcasting rights, multimedia, marketing and promotional rights, as well as intangible rights like emblems and rights related to publication regulations. FIFA is assigning the associations and confederations sole responsibility for approving the distribution of the afore-

mentioned exploitation rights. The provision of these economic rights is unconditional and has no expiration.

PROCEEDINGS BEFORE THE COURT OF JUSTICE OF THE EUROPEAN UNION

The request for preliminary ruling was drawn up on the basis of Article 98(1) of the Rules of Procedure of the Court of Justice of the European Union and was lodged on 27 May 2021 (Case C-333/21, <https://tinyurl.com/45jcuta5>, 2025). In line with the stipulations of this article of the Rules of procedure, requests for pre-processing must be sent to the Member States in their original form, along with a translation into the official language of the state addressed. If required because of the request's length, this translation will be substituted by the translation of the request's summary into the official language of the state it is sent to and will serve as a basis for that state to take a position. The summary includes the complete text of one or more inquiries submitted for preliminary ruling. As specified in the request for a preliminary ruling, that summary particularly include the subject of the dispute in the main proceedings, the key arguments of the parties involved in those proceedings, a concise summary of the rationale for the request for a preliminary ruling, and the relevant case-law and provisions of both national and European Union law cited. In this court proceedings, the prosecutor asked for a ruling, arguing that FIFA and UEFA's resistance to the Super League is in fact a violation of anti-competitive agreements and an exploitation of their dominant market position regarding the organisation of international club football tournaments in Europe and the market for the commercialisation of rights associated with those competitions. The prosecutor initiated the adoption of provisional protective measures in order to facilitate the establishment and operation of the Super League.

The request for preliminary ruling is based on article 267 of the Treaty on the functioning of the European Union, which seeks the interpretation of articles 45, 49, 56, 63, 101 and 102 of the Treaty on the functioning of the European Union. The provisions of article 267 of the Treaty on the functioning of the European Union provide that the Court of justice of the European Union have jurisdiction to rule on preliminary questions concerning: 1) interpretation of the treaties and 2) validity and interpretation of acts of the institutions, bodies, offices or agencies of the European Union. Article 45 of the Treaty refers to the free movement of persons, services and capital, as it ensures the freedom of movement of workers within the European Union, while article 49 guarantees the right of establishment, i.e. prohibits restrictions on the freedom of establishment of citizens of one member state in the territory of another member state. Article 56 of the Treaty prohibits restrictions on the freedom to provide services within the European Union in relation to nationals of Member States who are established in another member state and not in the state of the person for whom the services are intended. Article 63 prohibits all restrictions on the movement of capital between Member States, as well as between Member States and third countries. Article 101 of the Treaty on the functioning of the European Union addresses competition rules, especially the conflict with the internal market and the ban on any agreements among companies, along with the rulings by associations of companies and coordinated actions that could influence trade among Member States, and are aimed at or result in preventing, limiting, or distorting competition within the internal market. Also, article

102 of the Treaty on the functioning of the European Union forbids any exploitation by one or more undertakings of a dominant position in the internal market or in a significant segment of it as long as it may influence trade among Member States.

The European Super League company stated that FIFA and UEFA have misused their dominant position by arbitrarily deciding to prohibit rival competitions and forcing clubs to relinquish rights to exploit the contests in which they take part. It has also noted that UEFA and FIFA hinder free market competition by enforcing unreasonable and excessive limitations on the Super League. FIFA and UEFA were ordered to stop anti-competitive behavior, to prevent such actions going forward, and to avoid taking any measures or actions, as well as making statements or announcements that (in)explicitly obstruct or hinder the planning of the Super League, its commencement and operation, including the involvement of clubs and players in it. According to the request, FIFA and UEFA must be barred from announcing or threatening, preparing, starting, and/or enforcing any disciplinary or punitive actions, either directly or via their associated members (such as national associations), confederations, licensed clubs, or national or domestic leagues (or from encouraging or promoting third parties to announce, threaten, prepare, start, and/or enforce such disciplinary or punitive actions), against clubs, their management and staff, and/or players involved in the Super League's preparation and participation, specifically ensuring they do not exclude these clubs and/or players from any international or national competition they regularly enter or meet the standard requirements for. Due to all of the above, the European Super League company has requested that FIFA and UEFA to immediately eliminate all consequences of anti-competitive practices that occurred before or during the duration of this proceeding.

In this proceeding on 15 December 2022, the opinion was delivered by the independent lawyer Athanasios Rantos from Greece (<https://tinyurl.com/dzmzwec9>, 2025), who was re-elected Advocate General of the Court of Justice of the European Union on 21 April 2021 and whose engagement lasts from 7 October 2021 to 6 October 2027. He suggested to the Court of Justice of the European Union that articles 101 and 102 of the Treaty on the Functioning of the European Union should be understood in a manner that does not contradict articles 22 and 71-73 of the FIFA Statute, along with articles 49 and 51 of the UEFA Statute. This stipulates that the formation of a new pan-European club football tournament requires prior authorisation, as the significance of the anticipated competition means that the restrictive impacts of the aforementioned system are both intrinsic and appropriate for attaining UEFA and FIFA's legitimate goals, which are associated with the distinct nature of sport. Articles 101 and 102 of the Treaty on the functioning of the European Union should be understood as not preventing FIFA and UEFA, their member associations, or national leagues from threatening sanctions on clubs belonging to those associations when those clubs engage in a project to create a new pan-European club football competition, which might endanger the legitimate goals of the mentioned federations. Nevertheless, the sanctions of exclusion imposed on players who are not involved in the specific project are excessive, especially concerning their removal from national teams. Articles 101 and 102 of the Treaty on the functioning of the European Union must be interpreted in such a way that they do not conflict with articles 67 and 68 of the FIFA Statute, to the extent that restrictions relating to the exclusive commercialisation of rights relating to competitions organ-

ised by FIFA and UEFA are inherent in achieving legitimate objectives linked to the specificity of sport and are proportionate to those objectives. Furthermore, it is for the referring court to examine to what extent the exemption provided for in article 101(3) of the Treaty on the functioning of the European Union can be applied to the members in question, i.e. whether there is an objective justification for that conduct within the meaning of article 102 of the Treaty on the functioning of the European Union. Articles 45, 49, 56 and 63 of the Treaty on the functioning of the European Union must be interpreted in such a way that they are not in conflict with articles 22 and 71-73 of the FIFA Statute, nor articles 49 and 51 of the UEFA Statute, which stipulate that creating a new pan-European club football tournament requires prior authorisation to the extent that this requirement is deemed suitable and essential for that aim, considering the unique characteristics of the proposed competition.

In its judgment issued on December 21, 2023 (<https://tinyurl.com/4ysf622m>, 2025), the Court of Justice of the European Union has found that the practice of sport, given that it constitutes an economic activity, is covered by the provisions of the European Union law applicable to such activities. Having regard to the objectives of the Union, the practice of sport is subject to EU law only in so far as it constitutes an economic activity within the meaning of the Treaty (C-36/74 - Walrave and Koch v Association Union Cycliste Internationale and Others, 12.12.1974). Also, freedom of movement for workers, regulated under the Treaty, extends not only to the actions of public authorities but also to rules of any other nature aimed at regulating gainful employment in a collective manner. A professional football charter of the national football federation falls within this scope if the charter has the status of a national collective agreement (C-325/08 - Olympique Lyonnais SASP v Olivier Bernard and Newcastle UFC, 16.3.2010.).

Only certain special rules are adopted solely for specific non-economic reasons. They relate to the issues that concern only sport as such, particularly those relating to the exclusion of foreign players from teams participating in competitions between their national teams or the determination of classification criteria, used for the selection of sportsmen in individual sports (C-415/93, Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal club liégeois SA v Jean-Marc Bosman and others and Union des associations européennes de football (UEFA) v Jean-Marc Bosman, 15.12.1995.). This proceeding indicates that the Treaty prohibits: 1) the enforcement of rules established by sports associations, which dictate that a professional footballer, who is a citizen of one Member State, cannot be hired by a club from another Member State after their contract ends unless the new club compensates the previous club with a transfer, training, or development fee; and 2) the enforcement of regulations set by sports associations that limit the number of professional players from other Member States that football clubs can field in matches within their organised competitions.

In addition to these special rules, adopted by sports associations, which regulate the paid employment or provision of services of professional or semi-professional players, there are other rules which do not formally regulate such work or provision of services. Nevertheless, they directly affect them and may be covered by the provisions of the Treaty on the functioning of the European Union, relating to the free movement of persons, services and capital (article 45), as well as by the provisions prohibiting restrictions on the freedom to provide services (article 56). Additionally, the

rules concerning such associations may fall under the provisions that protect the right of establishment (article 49), and these associations might be regarded as undertakings according to the rules related to competition (article 101) and the abuse of a dominant position within the internal market (article 102). The rules adopted by associations and their actions are covered by the provisions of the Treaty on the functioning of the European Union. They relate to competition rules, when the conditions for the application of those provisions are met. Since such rules are covered by the aforementioned provisions of the Treaty on the functioning of the European Union in case they contain requirements applicable to individuals, they should be designed and implemented in compliance with the general principles of European Union law, particularly the principles of non-discrimination and proportionality (Zglinski, 2022).

Article 165(1) of the Treaty on the functioning of the European Union provides, *inter alia*, that the Union shall contribute to promoting the European dimension of sport, taking into account the specific nature of sport, its structures based on voluntary activity, and its social and educational function. Pursuant to the stipulations of paragraph 2 of this article of the Treaty, the European Union's actions shall focus on enhancing the European aspect of sport by fostering fairness and transparency in sports events and cooperation among sport governing bodies. It also seeks to safeguard the physical and moral integrity of sportsmen, particularly the youngest female in sport. As stated in paragraph 3 of this article of the Treaty, the European Union and its Member States shall promote cooperation with third countries and relevant international organisations in the areas of education and sport, especially with the Council of Europe. According to the Court of Justice of the European Union, the provisions of this article of the Treaty on the functioning of the European Union must be interpreted in accordance with the provisions of article 6 of the Treaty, which provides that the European Union is competent to take action to support, coordinate or supplement the action of the Member States. One domain of such activity at the European level encompasses education, vocational training, youth, and sports. While the relevant institutions of the European Union are to consider the diverse elements and objectives defined in article 165 of the Treaty, and based on that article, incentive measures or recommendations are adopted in the area of sport, it is not mandatory that those various elements and objectives, as well as those incentive measures and recommendations, are included or taken into account when applying the rules the interpretation of which the referring court seeks from the Court of Justice of the European Union. This applies irrespective of their connection to the freedoms concerning the movement of people, services, and capital (articles 45, 49, 56, and 63 of the Treaty), or competition rights (articles 101 and 102 of the Treaty). Even Article 165 of the Treaty cannot be viewed as a specific rule that wholly or partially excludes sports from other primary law provisions of the European Union, which may apply to it or impose special considerations on sports within that application.

When claimed that a rule, adopted by a sports association constitutes an obstacle to the freedom of movement of workers or an anti-competitive prohibited agreement, the consideration of that rule as an obstacle or anti-market prohibited agreement should in any case be based on a concrete examination of the content of the said rule in the actual context in which it is to be implemented. Such examination may include taking into account, for example, the nature, organisation or functioning of the sport in question

and, more specifically, its degree of professionalisation, the way it is dealt with, the way in which the different actors involved interact, and the roles played by the structures or bodies responsible for it at all levels and with which the European Union encourages co-operation in accordance with article 165(3) of the Treaty. Moreover, once it is determined that there exists an impediment to the freedom of movement of workers, the association which adopted the rule in question has the possibility of proving its justification, necessity and proportionality, based on specific objectives deemed legitimate.

Having made its final decision, the Court of Justice of the European Union has also assessed the provisions regarding: rules relating to the prior approval of inter-club football competitions and the participation of clubs and sportsmen in those competitions; the procedures under which clubs and sportsmen participating in unsanctioned competitions are threatened with sanctions; the way in which rules, such as those adopted by FIFA regarding the right to use the said competitions, should be understood; possibilities for justifying rules, which relate to the prior approval of competitions, as well as the participation of clubs and sportsmen in those competitions; freedom of movement.

Based on the above-mentioned positions, the Court of Justice of the European Union has decided that article 102 of the Treaty on the functioning of the European Union “must be interpreted as meaning that the adoption and implementation of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes abuse of a dominant position”.

The Court ruled that article 101(1) of the Treaty on the functioning of the European Union “must be interpreted as meaning that the adoption and implementation, directly or through their member national football associations, of rules by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, making subject to their prior approval the setting up, on European Union territory, of a new interclub football competition by a third-party undertaking, and controlling the participation of professional football clubs and players in such a competition, on pain of sanctions, where there is no framework for those various powers providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate, constitutes a decision by an association of undertakings having as its object the prevention of competition”.

According to the Court, articles 101(3) and 102 of the Treaty on the functioning of the European Union “must be interpreted as meaning that rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, may benefit from

an exemption to the application of Article 101(1) of the Treaty on the functioning of the European Union or be considered justified under Article 102 of the Treaty on the functioning of the European Union only if it is demonstrated, through convincing arguments and evidence, that all of the conditions required for those purposes are satisfied”.

Articles 101 and 102 of the Treaty must be interpreted as: 1) “not precluding rules laid down by associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions, inasmuch as they designate those associations as being the original owners of all of the rights emanating from competitions coming under their ‘jurisdiction’, where those rules apply only to competitions organised by those associations, to the exclusion of those which might be organised by third-party entities or undertakings”; 2) “precluding such rules in so far as they confer on those same associations an exclusive power relating to the marketing of the rights at issue, unless it is demonstrated, through convincing arguments and evidence, that all the conditions required in order for those rules to benefit, under Article 101(3) of the Treaty on the functioning of the European Union, from an exemption to the application of Article 101(1) of the Treaty on the functioning of the European Union and be considered justified under Article 102 of the Treaty on the functioning of the European Union are satisfied”.

The Court ultimately ruled that article 56 of the Treaty on the functioning of the European Union “must be interpreted as precluding rules by which associations which are responsible for football at world and European levels and which pursue in parallel various economic activities related to the organisation of competitions make subject to their prior approval the setting up, on European Union territory, of interclub football competitions by a third-party undertaking, and control the participation of professional football clubs and players in such competitions, on pain of sanctions, where there is no framework for those rules providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate”.

This decision actually means that the ban on clubs by FIFA and UEFA from joining the Super League competition is not in accordance with European Union regulations, and that these two organisations have abused their dominant position. Therefore, the FIFA and UEFA rules, on which such a ban is based are not justified. According to this decision, a foundation such as the Super League, does not have to be approved, as the Court does not have jurisdiction over it. Although the Court unequivocally assesses the monopolistic behaviour of FIFA and UEFA, and requires both organisations to reconsider some of their restrictive practices, this decision also gives them the opportunity to provide a framework through which they can justify some of their own practices. To have control over access to football competitions, the statutes of FIFA and UEFA must be changed to ensure transparency and fairness for participants. Non-competition provisions must be proportionate and limited to what is absolutely necessary for the existence of FIFA and UEFA competitions. If the statutes can legally reflect these requirements, FIFA and UEFA could retain control over competitive projects. The Court of Justice has ruled that FIFA and UEFA rules on the use of media rights may hinder the exploration of new, potentially innovative and interesting competitions. New and innovative competition projects could improve the financial situation of professional football clubs and offer viewers a more diverse range of options.

CONCLUSION

The decision of the Court of Justice of the European Union is one of the first to deal with the relationship between European Union law and sports law. It is significant in several aspects, since it does not only reflect on the legal aspects of sport in the European Union and the internal acts of international sports entities, but also deeply delves into commercial law and economic principles that influence the functioning of international sports competitions. This decision applies to football competitions, but may also apply to other sports that have the same or similar organisation.

The decision does not affect the right of international sports organisations such as FIFA and UEFA to organise their competitions, based on the acts and rules they have adopted. However, these rules must be transparent, objective, non-discriminatory and proportionate. Accordingly, they cannot restrict other organisations from creating new competitions by abusing their dominant position. This is actually done by the rules of FIFA and UEFA, which, through (dis)approval, control and sanctions, prevent fair competition that could offer appropriate competitive conditions for football competitions. These rules allow discretionary powers that block the establishment of alternative competition under threat of sanctions and are contrary to European Union competition law, in particular articles 101 and 102 of the Treaty on the functioning of the European Union.

According to the Court of Justice of the European Union the adoption of rules on the prior approval of competitions and on the participation of clubs and players is legitimate under European Union regulations, in order to achieve the purpose of guaranteeing the homogeneity and coordination of these competitions within the overall calendar of matches, as well as to promote and maintain sports competitions based on equal opportunities and merit. However, the rules on prior approval and participation, including the related sanction regime, must be subject to limitations, obligations and review that can eliminate the risk of abuse of a dominant position. In this regard, it is necessary to establish a framework for substantive criteria and detailed procedural rules to ensure that they are transparent, objective, precise and non-discriminatory.

This decision does not necessarily affect the possibilities that FIFA and UEFA have when organising international football competitions, but their rules must be adapted to the legal framework established in the European Union. The economic characteristics of these football competitions are clearly recognised and fall unequivocally within the remit of European Union regulations. The boundaries of these regulations significantly touch upon the field of sports law, which clearly shows that it is a matter of regulating complex, global economic industries. This decision, together with the one that established the so-called Bosman rule, affects the way in which European Union regulations might interact with a global industry, which football undoubtedly already is. The Court of Justice of the European Union has opened the door wide for European Union regulations to address in more detail the regulation of this topic, but also areas such as sports law in general.

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