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The following presentation, largely based on documents issued by the Court of Justice of the European Union (European Court of Justice - ECJ) is intended as a quick, objective overview of each of the three judgments issued on December 21, 2023. In-depth analysis of these rulings is only part of the story.

## First case: C-333/21 | European Superleague Company

**ECJ documentation:**
Press release | Legal summary | Full judgment

*Submitting competitions to FIFA and UEFA for approval and threatening to sanction athletes taking part in unauthorized competitions.*

**Origin of the dispute**: Twelve of Europe's biggest soccer clubs, through the Spanish European Superleague Company, wanted to set up a new European club competition: the Superleague. The Fédération Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA) strongly opposed the idea, stating that such a competition would not be recognized and that any club or player taking part could be excluded from the competitions they organized.

**Reason for referral to the ECJ:** The European Superleague Company brought an action against FIFA and UEFA before the Madrid Commercial Court, seeking a declaration that the advertisements were unlawful and prejudicial. In this context, the Spanish court chose to use the "**preliminary ruling**" mechanism[1] and to ask the ECJ about the compatibility with EU law of certain FIFA and UEFA statutory provisions.

More specifically:

- provisions making the creation and organization of interclub soccer competitions by a third-party company subject to prior authorization, and controlling the participation of soccer clubs and players in such competitions, subject to penalties;
- provisions giving them exclusive control over the exploitation of the various rights associated with these competitions.

**Position of the ECJ**: Perhaps the first point to highlight is that, as the ECJ itself points out, it was not asked to rule on the compatibility of the Superleague project with EU law, but on the compatibility of FIFA and UEFA rules which, incidentally, have evolved in 2022. **In no case, therefore, has the ECJ expressly validated or invalidated this specific Superleague project**.

[1] In particular, this mechanism enables all the courts of the EU member states to ask the ECJ about the interpretation of Union law in the context of a dispute referred to them. **Although the interpretation given is then valid for all the courts of the Member States that might be asking the same question, the ECJ does not directly settle the national dispute that gave rise to the preliminary question.** It is up to the national court to resolve the case brought before it, on the basis of the interpretation provided by the ECJ.

The second point is that, given the length and density of the judgment, it would be pointless to even mention all the subjects it covers.

**In our opinion, the central aspect, if one were to be retained, lies in the contrast between, on the one hand, a relative acceptance of the FIFA and UEFA rules in question in principle and, on the other, their marked rejection given the way in which they are (or were) - or rather are not (or were not) - concretely drafted**.

For example, the ECJ emphasized that the rules in question could not be described, in **general terms,** as "abuse of a dominant position" since, on the contrary, they **appeared legitimate in principle in** view of the specific features of professional soccer.

Similarly, while these rules constitute an obstacle to the freedom to provide services, the ECJ nevertheless considers **that they can be justified, once again in principle,** by general interest objectives. These include ensuring:

- that such competitions will be organized in accordance with the principles, values and rules of the game that underpin professional soccer, in particular the values of openness, merit and solidarity;
- that these competitions will be integrated, in a materially homogeneous and temporally coordinated way, into the "organized system" of national, European and international competitions that characterizes this sport.

**However, there is no reason why such rules should not be governed by "*substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate*". In fact,** when an entity carries out an "economic activity" while holding the power to control access to this activity for any other company, it is placed in such a situation of conflict of interest that **this power must necessarily be accompanied by limits, obligations and control to avoid any arbitrary use**.

However, this does not appear to be the case for the rules in question, and it is this lack of safeguards that inevitably leads to the finding (in particular):

(i) abuse of a dominant position (article 102 of the Treaty on the Functioning of the European Union - TFEU),

(ii) the classification of these rules as decisions by associations of undertakings which are sufficiently harmful to competition to be considered as having the "*object*" of preventing competition (article 101 TFEU),

(iii) or that the restriction on the freedom to provide services cannot be considered justified (Article 56 TFEU)[2] .

[2] As regards the infringement of competition law, the Spanish court still has to verify whether the rules in question could not, despite everything, be considered justified or benefit from an exemption, even if this seems unlikely in view of the strict conditions required for this purpose in such a situation.

In the end, it will be up to the Spanish judge who referred the case to the ECJ (and then to other national judges if necessary), to assess the specific Superleague case submitted to it in the light of the "reading grid" provided by the ECJ in response to its preliminary question.

Lines have clearly evolved. But have we witnessed a genuine paradigm shift? Probably not.

**Second case: C-124/21 P | International Skating Union / Commission**

**ECJ documentation:**
Press release | Legal summary | Full judgment

*Submission of competitions for ISU approval and sanctioning of athletes taking part in unauthorized competitions*

**Origin of the dispute**: Following a complaint from two professional skaters, the European Commission considered that certain rules of the International Skating Union (ISU) were contrary to EU law, as they had the **object of restricting competition** (article 101 TFEU). It therefore enjoined the ISU to put an end to this situation.

More specifically, it involved:

- **prior authorization rules**, enabling it to submit international ice speed skating competitions for approval;
- **rules enabling it to** severely **penalize** athletes who take part in a competition not authorized by it.

In addition, the Commission considered that this anti-competitive infringement was reinforced by an **arbitration rule** stipulating that disputes must be brought exclusively before the Court of Arbitration for Sport (CAS) in Switzerland. This made it more difficult for **a judge** to **review** arbitration awards in the light of EU competition law, as such subsequent review would necessarily be entrusted to a court established... in a non-EU country.

**Reason for referral to the ECJ**: ISU first sought annulment of the Commission's decision before the General Court of the European Union. The latter invalidated only the part concerning the arbitration rule.
The ISU then lodged an **appeal** before the ECJ, and the two professional skaters who had lodged the complaint and the European Elite Athletes Association also lodged an incidental appeal.

**Position of the ECJ**: **The Commission's initial analysis is validated in its entirety**. The ECJ rejects the ISU's appeal, but accepts that of the two skaters and the European Elite Athletes Association.

➢ **Focus on prior authorization and sanction rules**

The ECJ adopted the same reasoning as in the **European Superleague Company** case: the **power to prevent competitors from entering the market must necessarily be accompanied by strictions, obligations and review. In the present case, however, there is no such framework**.

➢ **Focus on the arbitration rule**

For the ECJ, it is insufficient to consider that arbitration rules are generally justified by legitimate interests linked to the specific nature of sport. It is necessary to verify that the court called upon to review any awards made by the arbitral body is in a position to:

- ensure compliance with the public policy provisions of Union law (including competition rules),
- to refer a question to the ECJ for a preliminary ruling.

It must be clearly understood that what is ultimately criticized is " *complained not of the existence, organisation or operation of the CAS as an arbitration body, but rather of the legal immunity enjoyed by the ISU [...], in the light of EU competition law, in the exercise of its decision-making and sanctioning powers, to the detriment of persons who may be affected by the lack of a framework for those powers and the discretionary nature which derives therefrom*." (§ 184)

**Third case: C-680/21 | Royal Antwerp Football Club**

**ECJ documentation:**
Press release | Legal summary | Full judgment

*Minimum number of "home-grown players" required of professional soccer clubs*

**Origin of the dispute**: A professional footballer and a Belgian club challenged before the Belgian courts the rules of the Union of European Football Associations (UEFA) and the Royal Belgian Union of Football Associations (URBSFA) relating to "**home-grown players" (HGP)**.

UEFA makes the participation of professional clubs in its competitions conditional on the inclusion of a minimum number of HGPs on the list of players. A HGP is **a player who have been trained by their club or by a club affiliated to the same national football association**, for at least three years between the ages of 15 and 21 (8 HGPs out of 25 players, 4 of whom must have been trained specifically by the club registering

them). The URBSFA rules are largely based on UEFA rules (without the 4 "local" HGP rule).

**Reason for referral to the ECJ**: Questioning the possible anti-competitive nature of these rules (Article 101 TFEU), as well as their possible conflict with the principle of free movement of workers (Article 45 TFEU), the Belgian court decided to refer the matter to the ECJ via the **preliminary ruling** mechanism.

**Position of the ECJ:** Few certainties emerge clearly from a reading of this judgment, the ECJ recalling above all the essential principles applicable in this area, then passing the ball back to the national courts for their concrete application.

- **Compatibility with EU competition law? Not unless...**

In particular, EU law prohibits all decisions by associations of undertakings which may affect trade between Member States and which have **as their object or effect the** prevention, restriction or distortion of competition within the internal market.

According to the ECJ, the rules at issue here must be regarded as "decisions by associations of undertakings", and they " *limit or control one of the essential parameters of the competition in which professional football clubs may engage, namely the recruitment of talented players, whatever the club or place where they were trained, which could enable their team to win in the encounter with the opposing team*".

The challenge - and the task of the Belgian courts - will then be to determine whether these rules infringe competition by virtue of their **purpose** or **their actual or potential effects**, since the method of analysis and the consequences are not the same.

In the former case, it will then be much more difficult to exempt anti-competitive behavior, whereas in the latter, it may be justified by the pursuit of a legitimate objective in the general interest, which is itself not anti-competitive in nature, provided that the means used to achieve it are necessary to this end, and that these means do not eliminate all competition.

- **Compatibility with EU internal market law? Not unless...**

At first glance, the rules in question appear to infringe the principle of the free movement of workers, in particular because they are likely to give rise to indirect discrimination based on nationality to the detriment of players from an EU Member State other than Belgium.

Traditionally, however, such restrictions can be justified if they pursue a legitimate objective in the general interest, of which encouraging the recruitment and training of

young professional footballers is undoubtedly one (see ECJ judgment of March 16, 2010, Bernard v. OL, No. C-325/08). However, the measures adopted must comply with the principle of proportionality, which implies that they are both suitable for achieving the objective pursued and do not go beyond what is necessary to attain it. In particular, the ECJ points out that account must be taken of the fact **that, by placing on the same level as the recruitment of young players already trained by any other club also affiliated to that national football association**, the rules may not constitute real and significant incentives for some of those clubs (particularly those with significant financial resources) to recruit young players with a view to training them themselves.

It is up to UEFA and URBSFA to demonstrate that the various conditions mentioned have been met, and for the national courts to decide whether this is the case!

It should be remembered that rules inspired by the HGPs system in soccer exist in France and Europe in other sports (e.g. the JIFF rule in French rugby). These are therefore also potentially impacted by the principles derived from the Royal Antwerp Football Club ruling.