



## PRESS RELEASE No 205/22

Luxembourg, 15 December 2022

Advocate General's Opinion in Case C-333/21 | European Superleague Company

### **Advocate General Rantos: The FIFA-UEFA rules under which any new competition is subject to prior approval are compatible with EU competition law**

*Whilst ESLC is free to set up its own independent football competition outside the UEFA and FIFA ecosystem, it cannot however, in parallel with the creation of such a competition, continue to participate in the football competitions organised by FIFA and UEFA without the prior authorisation of those federations*

The Fédération internationale de football association (International Association Football Federation) (FIFA), a Swiss body governed by private law, is football's world governing body; its objectives are, primarily, to promote football and to organise its own international competitions. The Union of European Football Associations (UEFA) is also a Swiss body governed by private law and is football's governing body at the European level. In accordance with their statutes, FIFA and UEFA hold a monopoly in respect of the authorisation and the organisation of international professional football competitions in Europe.

European Super League Company (ESLC), a company governed by Spanish law which was set up by prestigious European football clubs, plans to organise the first closed (or 'semi-open') annual European football competition, called the 'European Super League' (ESL), which would exist independently of UEFA but whose clubs would continue to participate in the football competitions organised by the national football federations and UEFA and FIFA.

Following the announcement of the ESL's creation, FIFA and UEFA issued a statement in which they set out their refusal to recognise that new body. They also warned that any player or club taking part in that new competition would be expelled from competitions organised by FIFA and its confederations.

Since ESLC took the view that the conduct of FIFA and UEFA had to be regarded as anti-competitive and incompatible with EU competition law and the provisions of the FEU Treaty relating to the fundamental freedoms, it brought proceedings before the Juzgado de lo Mercantil de Madrid (Commercial Court, Madrid). That court has requested the Court of Justice to rule on whether certain provisions of the FIFA and UEFA Statutes and the warnings or the threats of sanctions issued by those federations comply with EU law, in particular with the provisions relating to competition law (Articles 101 and 102 of the FEU Treaty) and to the fundamental freedoms (Articles 45, 49, 56 and 63 of the FEU Treaty).

**In his Opinion delivered today, Advocate General Rantos proposes that the Court should state in answer that:**

- 1. the FIFA-UEFA rules under which any new competition is subject to prior approval are compatible with EU competition law.** Having regard to the competition's characteristics, the restrictive effects arising from the scheme are inherent in, and proportionate for achieving, the legitimate objectives related to the specific nature of sport that are pursued by UEFA and FIFA;

2. **the EU competition rules do not prohibit FIFA, UEFA, their member federations or their national leagues from issuing threats of sanctions against clubs affiliated to those federations when those clubs participate in a project to set up a new competition** which would risk undermining the objectives legitimately pursued by those federations of which they are members;
3. **the EU competition rules do not preclude the restrictions, in the FIFA Statute, concerning the exclusive marketing of the rights relating to the competitions organised by FIFA and UEFA** since those restrictions are inherent in and proportionate to the pursuit of the legitimate objectives related to the specific nature of sport;
4. **EU law does not preclude the FIFA and UEFA Statutes which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme**, since that requirement is appropriate and necessary for that purpose, taking into account the particular characteristics of the planned competition.

### **The relationship between sport and EU law**

The Advocate General sets out preliminary observations on the relationship between sport and EU law. Thus, he observes first of all that the confirmation of the special nature of sport and its insertion into Article 165 TFEU by the Treaty of Lisbon marked the culmination of an evolution encouraged and promoted by the EU institutions. Article 165 TFEU gives expression to the 'constitutional' recognition of the 'European Sports Model', which is characterised by a series of elements applicable to a number of sporting disciplines on the European continent, including football.

That model is based, firstly, on *a pyramid structure* with, at its base, amateur sport and, at its summit, professional sport. Secondly, its primary objectives include the promotion of *open competitions*, which are accessible to all by virtue of a transparent system in which promotion and relegation maintain a competitive balance and give priority to sporting merit, which is also a key feature of the model. That model is, lastly, based on a *financial solidarity* regime, which allows the revenue generated through events and activities at the elite level to be redistributed and reinvested at the lower levels of the sport.

Article 165 TFEU was inserted specifically because sport is, at the same time, an area of significant economic activity. The rationale behind it is to emphasise the special social character of that economic activity, which may justify a difference in treatment in certain respects. Article 165 TFEU can be used as a standard in the interpretation and the application of the provisions of competition law in the field of sport. Accordingly, within its field, it is a specific provision as compared with the general provisions of Articles 101 and 102 TFEU, which apply to any economic activity.

Whilst the specific characteristics of sport cannot be relied on to exclude sporting activities from the scope of the EU and FEU Treaties, including in particular the provisions relating to competition law, the references to the specific nature and to the social and educational function of sport which appear in Article 165 TFEU may be relevant for the purposes, inter alia, of analysing, in the field of sport, any objective justification for restrictions on competition or on the fundamental freedoms.

The Advocate General observes that the mere fact that the same entity performs the duties both of regulator and of organiser of sporting competitions does not entail, in itself, an infringement of EU competition law. Furthermore, the main obligation on a sports federation in UEFA's position is to ensure that third parties are not unduly denied access to the market to the point that competition on that market is thereby distorted.

### **Key points of the reasoning concerning the questions referred for a preliminary ruling**

According to the Advocate General, even if **the rules at issue in the main proceedings relating to the prior approval scheme are liable to have the effect of restricting the access of UEFA's competitors to the market for the organisation of football competitions in Europe, such a fact, if established, does not manifestly mean**

**that those rules have the object of restricting competition** within the meaning of Article 101(1) TFEU.

The disciplinary measures which appear to have been envisaged by UEFA, including threats of sanctions made against participants in the ESL, are liable to have an impact on the readiness of the necessary clubs and players to form this new competition, and therefore to close off the market for the organisation of football competitions in Europe to a potential competitor.

To fall outside the scope of Article 101(1) TFEU, the restrictions caused by the rules at issue must be inherent in the pursuit of legitimate objectives and proportionate to those objectives, without going beyond what is necessary for their achievement. In that regard, the Advocate General takes the view that **the non-recognition by FIFA and UEFA of an essentially closed competition such as the ESL could be regarded as inherent in the pursuit of certain legitimate objectives, in that the purpose of that non-recognition is to maintain the principles of participation based on sporting results, equal opportunities and solidarity upon which the pyramid structure of European football is founded and to combat dual membership scenarios.**

In the light of its dominant position as the sole organiser of all major interclub football conditions at the European level, **the 'special responsibility' borne by UEFA, for the purpose of Article 102 TFEU, lies specifically in its obligation to ensure, when examining requests for authorisation of a new competition, that third parties are not *unduly* denied access to the market.**

So far as concerns the applicability of the 'classic' exemptions and justifications in competition law, the Advocate General observes that that **it is for the party accused of having infringed the competition rules to prove that its conduct satisfies the conditions subject to which the view may be taken that that conduct is covered by Article 101(3) TFEU or that it is objectively justified in the light of Article 102 TFEU.** He states, however, that in the present case, the order for reference was made without FIFA or UEFA having been heard beforehand, and that they were therefore unable to present arguments and evidence relating to the satisfaction of those conditions in the specific circumstances of this case.

In relation to the question whether the rules established by FIFA concerning the exploitation of sports rights are compatible with Articles 101 and 102 TFEU, the Advocate General considers that, **if a restriction of competition can be shown, it should then be examined whether that restriction is inherent in the pursuit of a legitimate objective and proportionate thereto, or whether the restrictive conduct satisfies the conditions to benefit from an individual exemption or the restriction is objectively justified.** (159) The Advocate General points out that football is characterised by an economic interdependence between the clubs, and therefore the financial success of a competition is primarily dependent on a degree of equality between the clubs. The redistribution of the revenue from the commercial exploitation of the rights arising from sporting competitions meets that objective of 'balance'.

The Advocate General is of the view, finally, that, notwithstanding the fact that the rules at issue in the main proceedings which provide that the setting up of a new pan-European interclub football competition is to be subject to a prior approval scheme are liable to restrict the provisions of the FEU Treaty relating to the fundamental economic freedoms, **such restrictions may be justified by legitimate objectives related to the specific nature of sport. In such a context, the requirement of a prior approval scheme may prove appropriate and necessary for that purpose, taking into account the particular characteristics of the planned competition.**

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 European

Union law or the validity of a European Union 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](#) of the Opinion is published on the CURIA website on the day of delivery.

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

Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106

**Stay Connected!**

