

Case C-333/21

European Superleague Company SL

v

Fédération Internationale de Football Association (FIFA)

and

Union of European Football Associations (UEFA),

(Request for a preliminary ruling from the Juzgado de lo Mercantil de Madrid)

Judgment of the Court (Grand Chamber) of 21 December 2023

(Reference for a preliminary ruling – Competition – Internal market – Rules introduced by international sports associations – Professional football – Private law entities vested with regulatory, control and decision-making powers, and the power to impose sanctions – Rules on prior approval of competitions, on the participation of football clubs and players in those competitions, and also on the exploitation of commercial and media rights related to those competitions – Parallel pursuit of economic activities – Organisation and marketing of competitions – Exploitation of related commercial and media rights – Article 101(1) TFEU – Decision by an association of undertakings adversely affecting competition – Concepts of anticompetitive ‘object’ and ‘effect’ – Exemption under Article 101(3) TFEU – Conditions – Article 102 TFEU – Abuse of dominant position – Justification – Conditions – Article 56 TFEU – Restrictions on the freedom to provide services – Justification – Conditions – Burden of proof)

1. *Questions referred for a preliminary ruling – Reference to the Court – Conformity of the decision to refer with the rules of national law governing the organisation of the courts and their procedure – Not a matter for the Court to determine*
(Art. 267 TFEU)

(see paragraphs 56, 57)
2. *Questions referred for a preliminary ruling – Admissibility – Need for a preliminary ruling and relevance of the questions referred – Assessment by the national court – Presumption of relevance of the questions referred*
(Art. 267 TFEU)

(see paragraphs 64-66)
3. *EU law – Scope – Pursuit of sport as an economic activity – Included – Rules introduced by sporting associations relating to the organisation of competitions in their discipline, their proper functioning and the participation of sportspersons therein – Whether permissible – Limits – Exercise of rights and freedoms conferred on individuals by EU law*
(Arts 45, 49, 56, 63, 101, 102 and 165 TFEU)

(see paragraphs 75, 83, 85-88, 101)

4. *EU law – Scope – Pursuit of sport as an economic activity – Included – Rules adopted solely on non-economic grounds and relating to questions of interest solely to sport – Not included – Rules issued by sporting associations aimed at establishing a prior approval scheme for sporting competitions, a framework for the participation of football clubs and players in those competitions and exploiting the commercial and media rights relating to those competitions – Rules establishing a framework for economic activities – Included*
(Arts 45, 49, 56, 63, 101, 102 and 165 TFEU)

(see paragraphs 84, 89-94)
5. *EU law – Scope – Pursuit of sport as an economic activity – Included – Rules issued by sporting associations aimed at establishing a prior approval scheme for sporting competitions, a framework for the participation of football clubs and players in those competitions and exploiting the commercial and media rights relating to those competitions – Restriction – Justification – Account taken of the specific characteristics of sport*
(Arts 45, 49, 56, 63, 101, 102 and 165 TFEU)

(see paragraphs 96-100, 102-106)
6. *Competition – EU rules – Undertaking – Concept – Exercise of an economic activity – Organisation and marketing by sporting associations of interclub football competitions on European Union territory and exploitation of the rights related thereto – Included*
(Arts 101 and 102 TFEU)

(see paragraphs 112-115)
7. *Dominant position – Abuse – Prohibition – Purpose – Sanctions for practices liable to cause, even indirectly, harm to consumers by undermining an effective competition structure*
(Art. 102 TFEU)

(see paragraph 124)
8. *Dominant position – Abuse – Concept – Objective concept relating to conduct which is such as to influence the structure of a market and having the effect of hindering the maintenance or growth of competition – Obligations on the dominant undertaking – Competition on the basis of merit – Criteria for assessment*
(Art. 102 TFEU)

(see paragraphs 125-130)
9. *Dominant position – Abuse – Concept – Ability to restrict competition and exclusionary effect – Conduct having the actual or potential effect of denying potentially competing undertakings access to the market – Included*
(Art. 102 TFEU)

(see paragraph 131)
10. *Dominant position – Abuse – Purpose of a sporting association exercising economic activities in the organisation and marketing of sporting competitions as laid down in its statutes – Sporting association organising and exploiting commercially sporting competitions and having the power to determine whether other undertakings may participate in that economic activity – Power to grant prior approval and fix the conditions of exercise of those activities in relation to actual or potential competitors – Whether permissible – Condition – Framework suitable for eliminating the risk of abuse of a dominant position*
(Art. 102 TFEU)

(see paragraphs 132-138)

11. *Dominant position – Abuse – Concept – Sporting associations having laid down discretionary rules on prior approval, participation and sanctions in the context of international professional football competitions – No substantive criteria or detailed procedural rules ensuring that those rules and sanctions are transparent, objective, precise, non-discriminatory and proportionate – Included*
(Art. 102 TFEU)

(see paragraphs 143-152, operative part 1)
12. *Agreements, decisions and concerted practices – Adverse effect on competition – Criteria for assessment – Distinction between restrictions by object and by effect – Restriction by object – Whether sufficient degree of harm – Sufficient degree of harm revealed*
(Art. 101(1) TFEU)

(see paragraphs 159, 161-163)
13. *Agreements, decisions and concerted practices – Adverse effect on competition – Criteria for assessment – Content and objective of a cartel and economic and legal context of its development – Distinction between restrictions by object and by effect – Intention of the parties to an agreement to restrict competition – Not a necessary criterion – Infringement by object – Whether sufficient degree of harm – Criteria for assessment – Need to examine the effects of the anticompetitive conduct on competition – None*
(Art. 101 TFEU)

(see paragraphs 165-168)
14. *Agreements, decisions and concerted practices – Adverse effect on competition – Criteria for assessment – Distinction between restrictions by object and by effect – Restriction by effect – Examination of the operation of competition in the absence of the agreement at issue*
(Art. 101(1) TFEU)

(see paragraphs 169, 170)
15. *Agreements, decisions and concerted practices – Adverse effect on competition – Decisions by associations of undertakings – Purpose of a sporting association exercising economic activities in the organisation and marketing of sporting competitions as laid down in its statutes – Rules on prior approval, participation and sanctions in the context of international professional football competitions – No substantive criteria or detailed procedural rules ensuring that those rules and sanctions are transparent, objective, precise, non-discriminatory and proportionate – Restriction by object*
(Art. 101(1) TFEU)

(see paragraphs 171-179, operative part 2)
16. *Agreements, decisions and concerted practices – Adverse effect on competition – Decisions by associations of undertakings – Rules on prior approval, participation and sanctions in the context of international professional football competitions – Justification on grounds of legitimate objectives in the public interest – Condition – No restriction by object – Exemption – Conditions*
(Arts 101(1) and (3), and 102 TFEU)

(see paragraphs 183-188)
17. *Agreements, decisions and concerted practices – Prohibition – Exemption – Conditions – Improvement of the production or distribution of goods or contribution to technical or economic progress – Appreciable objective advantages such as to compensate for the*

disadvantages for competition caused by that agreement – Indispensable or necessary nature of the conduct at issue – No elimination of all effective competition for a substantial part of the products or services concerned – Burden of proof – Conditions of exemption cumulative (Art. 101(3) TFEU)

(see paragraphs 189-200)

18. *Dominant position – Abuse – Sporting associations having laid down discretionary rules on prior approval, participation and sanctions in the context of international professional football competitions – Whether abusive – Objective justification – Conditions – Scope of the burden of proof (Art. 102 TFEU)*

(see paragraphs 201-209, operative part 3)

19. *Agreements, decisions and concerted practices – Adverse effect on competition – Sporting associations having conferred on themselves exclusive powers to market rights emanating from professional football competitions coming within their jurisdiction – Restriction by object – Exemption – Conditions (Art. 101(1) and (3) TFEU)*

(see paragraphs 217-228, 230-241, operative part 4)

20. *Dominant position – Abuse – Sporting associations having conferred on themselves exclusive powers to market rights emanating from football competitions coming within their jurisdiction – Whether abusive – Objective justification – Conditions (Art. 102 TFEU)*

(see paragraphs 231-241, operative part 4)

21. *Freedom to provide services – Restrictions – Sporting associations having laid down discretionary rules on prior approval, participation and sanctions in the context of international professional football competitions – No substantive criteria or detailed procedural rules ensuring that those rules and sanctions are transparent, objective, precise, non-discriminatory and proportionate – Not permissible – Justification – None (Art. 56 TFEU)*

(see paragraphs 247-257, operative part 5)

Résumé

The Fédération internationale de football association (FIFA) is an association governed by Swiss law whose objectives include, inter alia, to draw up regulations and provisions governing the game of football and related matters, and to control every type of football at world level, but also to organise its own international competitions. FIFA is made up of national football associations which are members of six continental confederations recognised by it – which includes the Union of European Football Associations (UEFA), an association governed by Swiss law whose principal missions consist in monitoring and controlling the development of every type of football in Europe. As members of FIFA and UEFA, those national associations have the obligation, inter alia, to cause their own members or affiliates to comply with the statutes, regulations, directives and decisions of FIFA and UEFA,

and to ensure that they are observed by all stakeholders in football, in particular by the professional leagues, clubs and players.

In accordance with their respective Statutes, FIFA and UEFA have the power to approve the holding of international professional football competitions, including competitions between football clubs affiliated to a national association ('interclub football competitions'). They may also organise such competitions and exploit the rights related thereto.

European Superleague Company SL ('ESLC') is a company governed by Spanish law established on the initiative of a number of professional football clubs with the objective of organising a new European interclub football competition known as the 'Super League'.

The shareholder and investment agreement signed by the project promoters makes the establishment of the Super League subject to approval by FIFA and UEFA as a new competition compatible with their Statutes.

Following the announcement of the creation of the Super League, FIFA and UEFA issued a joint statement on 21 January 2021, setting out their refusal to recognise that new competition and warning that any player or club taking part in that new competition would be expelled from competitions organised by FIFA and UEFA. In another announcement, UEFA and a number of national associations reiterated the possibility of adopting disciplinary measures in respect of participants in the Super League, notably excluding them from certain major European and world competitions.

In those circumstances, ESLC brought an action before the Juzgado de lo Mercantil nº 17 de Madrid (Commercial Court No 17, Madrid, Spain), seeking, in essence, a declaration that those announcements, and also conduct by which FIFA and UEFA and their member national associations might put them into action, were unlawful and harmful.

According to that court, FIFA and UEFA hold a monopoly or, at least, a dominant position in the market for the organisation and marketing of international interclub football competitions, and that of the exploitation of the various rights related to those competitions. In that context, it is uncertain as to the compatibility of certain provisions of FIFA's and UEFA's Statutes with EU law, most notably Articles 101 and 102 TFEU, and also the provisions relating to the various fundamental freedoms guaranteed by the FEU Treaty.

By its judgment, delivered the same day as two other judgments ([1](#)) concerning the application of EU economic law to rules adopted by international or national sporting federations, the Court of Justice, sitting as a Grand Chamber, states that the conditions in which the rules put in place by FIFA and UEFA, concerning, on the one hand, prior approval of international interclub football competitions, the participation of football clubs and players therein, and also the sanctions provided

for to accompany those rules, and, on the other, the exploitation of the various rights related to those competitions, may be viewed as constituting abuse of a dominant position under Article 102 TFEU, as well as an anticompetitive agreement under Article 101 TFEU. The Court also rules on the compatibility of those rules on prior approval, participation and sanctions with the freedom to provide services guaranteed by Article 56 TFEU.

Findings of the Court

The Court begins by setting out three sets of observations.

First of all, it observes that the questions submitted by the referring court concern solely a set of rules adopted by FIFA and UEFA on the prior approval of international interclub football competitions and the participation therein of professional football clubs and their players, on the one hand, and the exploitation of the various rights related to those competitions, on the other. Accordingly, the Court is not called upon to rule on the very existence of FIFA and UEFA or on the well-foundedness of other rules adopted by those two federations or, lastly, on the existence or characteristics of the Super League project itself, either in the light of the competition rules or the economic freedoms enshrined in the FEU Treaty.

Next, the Court observes that all of the rules about which questions have been referred to it come within the scope of provisions of the Treaty relating to competition law and also those relating to the freedoms of movement. It observes in that regard that, in so far as it constitutes an economic activity, the practice of sport is subject to the provisions of EU law applicable to such activity, apart from certain specific rules which were adopted solely on non-economic grounds and which relate to questions of interest solely to sport per se. The rules at issue in the main proceedings, however, irrespective of whether they originate from FIFA or UEFA, do not come within that exception, since they relate to the pursuit of football as an economic activity.

Lastly, as regards the consequences that may be inferred from Article 165 TFEU – which specifies both the objectives assigned to Union action in the field of sport and the means which may be used to contribute to the attainment of those objectives – the Court observes that that provision is not a special rule exempting sport from all or some of the other provisions of primary EU law liable to be applied to it or requiring special treatment for sport in the context of that application. It further recalls that the undeniable specific characteristics of sporting activity may be taken into account along with other elements and provided they are relevant in the application of the provisions of the FEU Treaty relating to competition law and the freedoms of movement, although they may be so only in the context of and in compliance with the conditions and criteria of application provided for in each of those provisions.

In the light of those observations and after having noted that FIFA and UEFA must be categorised as ‘undertakings’ for the purposes of EU competition law in so far as

they pursue economic activities such as organising football competitions and exploiting the rights related thereto, the Court turns first to the question whether the adoption by FIFA and UEFA of rules on prior approval of interclub football competitions and participation therein, on pain of sanctions, may be held to be abuse of a dominant position under Article 102 TFEU, on the one hand, and an anticompetitive agreement under Article 101 TFEU, on the other.

In that regard, the Court observes that the specific characteristics of professional football, including its considerable social and cultural importance and the fact that it generates great media interest, together with the fact that it is based on openness and sporting merit, support a finding that it is legitimate to subject the organisation and conduct of international professional football competitions to common rules intended to guarantee the homogeneity and coordination of those competitions within an overall match calendar as well as to promote the holding of sporting competitions based on equal opportunities and merit. It is also legitimate to ensure compliance with those common rules through rules such as those put in place by FIFA and UEFA on prior approval of those competitions and the participation of clubs and players therein. It follows that, in the specific context of professional football and the economic activities to which the practice of that sport gives rise, neither the adoption of those rules nor their implementation may be categorised, in terms of their principle or generally, as an ‘abuse of a dominant position’ under Article 102 TFEU. The same holds true for sanctions introduced as an adjunct to those rules, since such sanctions are legitimate, in terms of their principle, as a means of guaranteeing the effectiveness of those rules.

Be that as it may, none of those specific attributes makes it possible to consider as legitimate the adoption or the implementation of rules and sanctions provided for by way of adjunct thereto, where there is no framework for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, non-discriminatory and proportionate. More specifically, it is necessary, in particular, that those criteria and those detailed rules should have been laid down in an accessible form prior to any implementation of the rules at issue. Moreover, in order for those criteria and detailed rules to be regarded as being non-discriminatory, they must not make the organisation and marketing of third-party competitions and the participation of clubs and players therein subject to requirements which are either different from those applicable to competitions organised and marketed by the decision-making entity, or are identical or similar to them but are impossible or excessively difficult to fulfil in practice for an undertaking that does not have the same status as an association or the same powers at its disposal as that entity and which, accordingly, is in a different situation to that entity. Lastly, in order for the sanctions introduced as an adjunct to those rules not to be discretionary, they must be governed by criteria that must not only also be transparent, objective, precise and non-discriminatory, but must also guarantee that those sanctions are determined, in each specific case, in accordance with the principle of proportionality, in the light of, *inter alia*, the nature, duration and seriousness of the infringement found.

It follows that the adoption and implementation of rules on prior approval, participation and 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, precise, non-discriminatory and proportionate, constitute abuse of a dominant position under Article 102 TFEU.

As regards the application of Article 101 TFEU to those rules, the Court observes that, although the stated reasons for the adoption of rules on prior approval for interclub football competitions may include the pursuit of legitimate objectives, such as ensuring observance of the principles, values and rules of the game underpinning professional football, they do confer on FIFA and UEFA the power to authorise, control and set the conditions of access to the market concerned for any potentially competing undertaking, and therefore to determine both the degree of competition that may exist on that market and the conditions in which that potential competition may be exercised.

Moreover, the rules on the participation of clubs and players in those competitions are liable to reinforce the anticompetitive object inherent in any prior approval mechanism that is not subject to restrictions, obligations and review suitable for ensuring that it is transparent, objective, precise and non-discriminatory, by preventing any undertaking organising a potentially competing competition from calling, in a meaningful way, on the resources available in the market, namely clubs and players, the latter being vulnerable – if they participate in a competition that has not had the prior approval of FIFA and UEFA – to sanctions for which there is no framework providing for substantive criteria or detailed procedural rules capable of ensuring that they are transparent, objective, precise, non-discriminatory and proportionate.

It follows that, where there is no framework providing for such substantive criteria or detailed procedural rules, the rules at issue reveal, by their very nature, a sufficient degree of harm to competition and must, as a result, be held to have as their object the prevention thereof. They accordingly come within the scope of the prohibition laid down in Article 101(1) TFEU, without it being necessary to examine their actual or potential effects.

In the second place, the Court turns to the question whether the rules on prior approval, participation and sanctions at issue may benefit from an exemption or be held to be justified. In that regard, the Court recalls, first, that certain specific conduct, such as ethical or principled rules adopted by an association, are liable to fall outside the scope of the prohibition laid down in Article 101(1) TFEU, even if they have an inherent effect of restricting competition, provided that they are justified by the pursuit of legitimate objectives in the public interest which are not per se anticompetitive in nature and the specific means used to pursue those objectives are genuinely necessary and proportionate for that purpose. It states, however, that that case-law does not apply in situations involving conduct that by its very nature infringes Article 102 TFEU or reveals a sufficient degree of harm as to justify a

finding that it has as its ‘object’ the prevention, restriction or distortion of competition within the meaning of Article 101 TFEU.

Second, as regards the exemption provide for in Article 101(3) TFEU, it is for the party relying on such an exemption to demonstrate that all four of the cumulative conditions required for the exemption are satisfied. Thus, the conduct being examined must, with a sufficient degree of probability, make it possible to achieve efficiency gains, whilst reserving for the users an equitable share of the profits generated by those gains and without imposing restrictions which are not indispensable for the achievement of those gains and without eliminating all effective competition for a substantial part of the products or services concerned.

It is for the referring court to determine, on the basis of the evidence adduced by the parties to the main proceedings, whether those conditions are satisfied in the specific case. That being said, as regards the last condition, concerning the maintenance of effective competition, the Court observes that the referring court will have to take account of the fact that there is no framework for the rules on prior approval, participation and sanctions providing for substantive criteria and detailed procedural rules suitable for ensuring that they are transparent, objective, precise and non-discriminatory, and that such a situation is liable to enable entities having adopted those rules to prevent any and all competition on the market for the organisation and marketing of interclub football competitions on European Union territory.

Consistently with the Court’s case-law on Article 102 TFEU, abusive conduct by an undertaking holding a dominant position may escape the prohibition laid down in that provision if the undertaking concerned establishes that its conduct was either objectively justified by circumstances extraneous to the undertaking and proportionate to that justification, or counterbalanced or even outweighed by advantages in terms of efficiency which also benefit the consumer.

In the present case, as regards, first, possible objective justification, the rules put in place by FIFA and UEFA have the aim of reserving the organisation of any such competition to those entities, at the risk of eliminating any and all competition from third-party undertakings, meaning that such conduct constitutes an abuse of a dominant position prohibited by Article 102 TFEU, one not justified, moreover, by technical and commercial necessities. Second, as regards the advantages in terms of efficiency, it will be for those two sporting associations to demonstrate, before the referring court, that efficiency gains can be achieved through their conduct, that those efficiency gains counteract the likely harmful effects of that conduct on competition and consumer welfare on the markets concerned, that that conduct is necessary for the achievement of such gains in efficiency, and that it does not eliminate effective competition by removing all or most existing sources of actual or potential competition.

In the third place, as regards the FIFA and UEFA rules relating to the rights emanating from professional interclub football competitions organised by those entities, the Court observes that, given their content, what they objectively aim to

achieve in terms of competition and the economic and legal context of which they form a part, those rules are liable not only to prevent any and all competition between the professional football clubs affiliated to the national football associations which are FIFA and UEFA members in the marketing of the various rights related to the matches in which they participate, but also to affect the functioning of competition, to the detriment of third-party undertakings operating across a range of media markets for services situated downstream from that marketing, to the detriment of consumers and television viewers.

It follows that such rules have as their ‘object’ the prevention or restriction of competition on the different markets concerned within the meaning of Article 101(1) TFEU, and constitute ‘abuse’ of a dominant position within the meaning of Article 102 TFEU, unless it can be proven that they are justified, inter alia in the light of the achievement of efficiency gains and the profit reserved for users. Thus, it will be for the referring court to determine, first, whether the negotiation for the purchase of those rights with two exclusive vendors enables actual and potential buyers to bring down their transaction costs and reduce the uncertainty they would face if they had to negotiate on a case-by-case basis with the participating clubs and, second, whether the profit derived from the centralised sale of those rights demonstrably enables a certain form of ‘solidarity redistribution’ within football for the benefit of all users.

In the fourth and last place, the Court holds that the rules on prior approval, participation and sanctions constitute an obstacle to the freedom to provide services enshrined in Article 56 TFEU. By enabling FIFA and UEFA to exercise discretionary control over the possibility for any third-party undertaking to organise and market interclub football competitions on European Union territory, the possibility for any professional football club to participate in those competitions as well as, by way of corollary, the possibility for any other undertaking to provide services related to the organisation or marketing of those competitions, those rules tend not only to impede or make less attractive the various economic activities concerned, but to prevent them outright, by limiting access for any newcomer. Moreover, the absence of a framework for those rules containing objective, non-discriminatory criteria known in advance does not enable a finding that their adoption is justified by a legitimate objective in the public interest.

¹ Judgments of 21 December 2023, *International Skating Union v Commission* (C-124/21), and of 21 December 2023, *Royal Antwerp Football Club* (C-680/21).