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# Update

## European and Competition Law

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### Judgment of the Court of Justice Superleague and the FIFA and UEFA rules on interclub football competitions organised by third parties

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The football world has been shaken by the recent judgement of the Court of Justice in the now famous Superleague case, which has given rise to disparate interpretations and hypothetical conclusions. Seven days on, a clearer and more balanced view of the judgement is now possible.

The context was known. In 2021, on 18 April, 12 European football clubs<sup>i</sup>, acting through the European Superleague Company ("ESC"), a Spanish company, announced their intention to create a new football competition, the Super League, which would run alongside the UEFA Champions League and European national competitions.

This announcement was met with opposition from FIFA and UEFA, who organise the main men's football competitions - and more - at global and European level. Reactions were harsh, including the threat of sanctions against clubs and players who decided to take part in this new competition.

In a counterattack, the ESC brought an action against FIFA and UEFA before the Commercial Court of Madrid, claiming that the aforementioned FIFA and UEFA rules are contrary to European Union ("EU") law. It was in this context that, under the so-called preliminary ruling procedure, the Spanish court put questions of interpretation to the Court of Justice, the highest court of the European Union, which were answered by the **Judgment of 21 December 2023**<sup>ii</sup>.

## I. Judgment Superleague

What was asked? Although the Court of Justice can only interpret EU law and cannot itself resolve the dispute before – in this case – the Spanish court, the Madrid court put 6 questions to the Court of Justice which basically sought clarification from the Court of Justice as to whether FIFA and UEFA's rules violated the European treaty in the areas of competition and freedom to provide services, on the following points:

- Whether the need for prior authorisation by FIFA and UEFA for a third party to organise interclub football competitions violates Articles 101 (as a whole) or 102 (abuse of a dominant position), or freedoms of movement (Articles 45, 49, 56 or 63), all of the Treaty;
- If these same articles oppose to the threat of sanctions on clubs and players who take part in these competitions organised by third parties? And whether these sanctions are compatible with the aforementioned articles?
- Whether the rules on the ownership and economic exploitation of media rights related to these competitions are also compatible with the aforementioned rules of the Treaty.

The answers did not fail to cause some surprise in public opinion, insofar as they were contrary to those proposed by Advocate General Rantos in the [conclusions he had presented on 15 December 2022](#) in this same case C-333/21. But it's not surprising in itself, not least because the Court of Justice is not bound by the Advocates General's conclusions. Even in a case as rich as this, in which the Advocate General delivered his opinion after hearing the 31 organisations that submitted observations, including 22 EU member states and 2 states from the European Economic Area!

In its judgement, the Court of Justice develops its traditional case law and comes to an obvious conclusion. Although some aspects of sports regulation are not economic in nature, the organisation of football competitions and the exploitation of their media rights are economic activities and, as such, are subject to the principles of free competition and freedom of movement. But this does not mean that they are irremediably illegitimate, given the characteristics of professional football, *“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, more broadly, to promote, in a suitable and effective manner, 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”, pelo que «such rules on prior approval and participation are thus legitimate in the specific context of professional football and the economic activities to which the practice of that sport gives rise, neither their adoption*

*nor their implementation may be categorised, in terms of their principle or generally, as an ‘abuse of a dominant position’”, the same can be said 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” (§§144-146).*

It is after this that the Court of Justice – once again – focuses its attention on what seems to us to be the proportionality test. If it is true that FIFA and UEFA have a dominant position in access to these markets and activities, this means that, given the potential risk of a conflict of interest, the power to determine the conditions of access to the market must be subject to criteria that guarantee its exercise in a transparent, objective, non-discriminatory and proportional manner. However, for the Court of Justice, neither FIFA nor UEFA fulfil these criteria, which is why it declares that there is an abuse of a dominant position on the part of FIFA and UEFA and that, furthermore, their rules constitute decisions by associations of undertakings that restrict competition.

But the Court does not stop there and extends its doctrine to the fundamental freedoms of movement as well, declaring that the FIFA and UEFA's rules constitute unjustified restrictions on the freedoms of movement of workers, establishment and services guaranteed by the same treaty.

Finally, the Court declares that FIFA and UEFA's rules on the exploitation of media rights are harmful to clubs, broadcasting companies, consumers and viewers, preventing them from enjoying new and potentially innovative or interesting competitions.

## II. Brief comment

The judgements of the Court of Justice in preliminary rulings do not resolve the dispute before the national court, nor do they formally have any effect beyond the proceedings. However, their precedential force is unequivocal and the effect of standardising the interpretation of the European Union law in question is unquestionable. In any case, it will be up to the Spanish national court to decide the specific case.

It should be emphasised that the Court of Justice did not question FIFA and UEFA's powers to approve and control competitions or to impose sanctions. The Court merely found that the rules governing those powers, as they stand, do not allow them to be exercised in a transparent, objective, non-discriminatory and proportionate manner.

Therefore, if FIFA and UEFA amend their rules in line with the Court of Justice's new requirements, they can, strictly speaking, continue to control the organisation by third parties of interclub football competitions. In fact, they will be able to do so in accordance with EU law!

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<sup>i</sup> Club Atlético de Madrid, Fútbol Club Barcelona, Real Madrid Club de Fútbol, Associazione Calcio Milan, Football Club Internazionale Milano, Juventus Football Club, Arsenal Football Club, Chelsea Football Club, Liverpool Football Club, Manchester City Football Club, Manchester United Football Club e Tottenham Hotspur Football Club. Destes, só se mantiveram ligados ao projeto o Barcelona e o Real Madrid.

<sup>ii</sup> Judgment of the Court of Justice of 21.12.2023, European Superleague Company, Case C-333/21, EU:C:2023:1011.