

The RRC – ROGON – CD TONDELA cases
Personal Consolidated and Reasoned Summary of the Three Opinions of the Advocate
General Emiliou

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I. Three Opinions – One General Framework

- RRC, ROGON and CD TONDELA cases are the natural follow-up of ISU, Superleague, Royal Antwerp and FIFA (Diarra) (*RRC 2, Rogon 2, CD Tondela 2*).
 - Each of the three Opinions in RRC, ROGON and CD TONDELA should be read together with the other two given the largely similar issues raised in the three cases (*RRC 3, Rogon 3, CD Tondela 3*).
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II. RRC Case - Preliminary Remark

- The *RRC* case is not an “outcome case” (*RRC 38*).
 - Given the complex legal and economic context underpinning the regulations, several factual and legal elements must be further clarified by the parties before the referring court to fully understand the mechanisms established by the FFAR and their impact on market actors (notably, football agents and clubs) (*RRC 36*).
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III. On the Merits

A. Rules on Agents’ Remuneration

1. **Transparency and Structure**
 - The remuneration rules are public, transparent, and do not appear to distort individual negotiations. As such, they seem to be closer to a “joint purchasing arrangement” where suppliers are aware negotiations occur on behalf of members bound by the agreed terms (*RRC 62*).
2. **Absence of Absolute Fee Cap**
 - There is no fixed ceiling on agents' fees. Instead, fees are linked to the transfer fee or player salary via a percentage cap. Since those base amounts can increase without limitation, agents’ fees can also rise accordingly. The FFAR cap functions more as a “dynamic maximum price” (*RRC 63*).
3. **No Presumption of Restriction by Object**
 - The rules are not inherently restrictive of competition. Determining whether they are restrictive *by object* requires deeper analysis of the rules’ specific features, context, and objectives. A purely private objective (e.g., limiting “unreasonable” fees) may be problematic, whereas goals such as preventing conflicts of interest or abuse could justify the rules (*RRC 64*).

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4. **Scope of Application**

- The remuneration rules apply only to a specific type of service. Agents are free to negotiate compensation for other services (e.g., consulting or representation). Article 15(3)-(4) FFAR does not create a substantial impediment, as the presumption appears rebuttable (*RRC 66*).

5. **Assessment under Meca-Medina**

- If the rules are found to have actual or potential anticompetitive effects, the referring court must assess whether they are justified under *Meca-Medina* case-law (*RRC 68*).

6. **Contextual Evaluation under EU Law**

- Articles 101 and 102 TFEU require a substantive analysis of legal and economic context, avoiding formalism (*Rogon 23*).

7. **Purpose-Based Justification**

- Not all restrictive agreements fall under Article 101(1) TFEU. Where public interest objectives are genuinely pursued, and the means are necessary and proportionate, restrictions may be justified (*Rogon 18*).

8. **Room for Self-Governance**

- While *Meca-Medina* is not a *carte blanche* for self-regulation, it affords associations greater leeway than typical market actors when regulating activities delegated to them by public authorities (*Rogon 41*).

9. **Requirement of Recognised Legitimate Objective in the Public Interest**

- The public interest invoked must be recognised under EU law or case-law. Under Article 3(1)(b) TFEU, only EU institutions can define and protect such interests (*Rogon 47*).

10. **No Presumption of Public Interest Pursued by Sports Associations**

- It cannot be taken for granted that a given measure adopted by sports association genuinely pursues a general interest of public nature, given that sports associations are private associations set up in order to pursue primarily economic and private objectives (*Rogon 48*).

11. **Burden of Proof – Ex Ante Analysis**

- The claimed public interest must be supported by concrete evidence. For almost any measure adopted by sports associations it is possible to invoke ex post some kind of interest of a general nature allegedly being pursued. It must be unequivocally clear from the measure itself, or from its context, what the specific interest pursued is, and the measure at issue must be genuinely designed to make a significant contribution to its furtherance (*Rogon 50*).

12. **Necessity Test**

- The referring court must assess whether:
 - (i) the rules respond to an *objective need* to pursue certain objectives,
 - (ii) they reflect a *genuine concern* for the attainment of those objectives, and
 - (iii) they are *suitable* to achieve those objectives (*RRC 72*).

13. **Proportionality and Less Restrictive Alternatives**

- The court must examine whether less restrictive, yet equally effective alternatives exist, and whether the rules disproportionately restrict agents' economic freedoms (*RRC 74*).

14. **Possible Exemption under Article 101(3) TFEU**

- If the rules are restrictive but not justified under *Meca-Medina*, the court must consider whether they meet the conditions for exemption under Article 101(3) TFEU (*RRC 75*).

15. Efficiency Gains Assessment

- Undertakings need not quantify gains precisely in the form of a monetary value but must identify their type with a sufficient degree of precision, explain how they are going to improve the market, and establish by means of concrete evidence that they are real and of a significant magnitude (*RRC 86–87*).

16. Meaning of “Economic Progress”

- Article 101(3) TFEU refers not just to economic growth but to broader notions such as sustainability, equity, and innovation. “Progress” means that not only the size of the cake increases, but that also the quality of the cake increases, or that the cake is shared more equitably, or that an equally tasty cake can also be baked in the future (*RRC 89*).

B. Licensing Rules

- The mere existence of a licensing system does not imply a restriction *by object*. The assessment depends on content, context, and aims. (*RRC 103*).
- Possibility to apply, *mutatis mutandis*, *Piau* case-law (*RRC 106*).

C. Multiple Representation

- These rules aim to prevent conflicts of interest, particularly protecting athletes. The key question is whether less restrictive, yet equally effective alternatives exist (e.g., disclosure requirements) (*RRC 107–108*).

D. Making an Approach Rule

- The ban on agents soliciting clients under exclusive contract, except in the last two months, is inherently anticompetitive in both object and effect. It hardly pursues a legitimate objective in the public interest, given that the need to strengthen contractual stability invoked by FIFA seems to be an interest of an economic and purely private nature (*RRC 109–111*).

E. Information Submission and Disclosure

- Generally unproblematic from a competition law standpoint unless it facilitates collusion through the sharing of sensitive information between competitors (*RRC 112*).

F. Article 102 TFEU

- The same considerations may, *mutatis mutandis*, be relevant for an assessment under Article 102 TFEU, given that:
 - (i) Articles 101 and 102 TFEU must be interpreted and applied consistently;
 - (ii) justifications for and exemptions from the prohibitions set out in Articles 101(1) and 102 TFEU should be interpreted harmoniously (*RRC 138–140*).
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III. Rogon Case

1. Scope of Private Regulatory Mandate

- The public authorities' mandate to private associations must be limited to the activities carried out by the undertakings represented in the association in question. No justification exists for extending them beyond that scope (*Rogon 63*).

2. Interconnected Economic Activities

- Private associations' rules may legitimately affect connected activities outside the core mission, especially in interdependent markets like football where various categories of economic operators (clubs, national and international federations, players, agents, sponsors, broadcasters and so on) need to interact and to collaborate to ensure the viability of the system and its appeal to the end consumers, i.e. supporters (*Rogon 64–65*).

3. Agents' Role in Football Ecosystem

- Agents can influence competition integrity and athlete welfare, linking their regulation to the association's broader mission (*Rogon 66*).

4. Three-Step Test for *Meca-Medina* Applicability

- The court must assess whether:
 - (i) a genuine public interest is at stake under EU law;
 - (ii) the pursuit of that interest falls within the mission of the association; and
 - (iii) the rules genuinely pursue that interest (*Rogon 68–69*).

5. No Blank Cheque

- The degree of connection between the association's core activities and the third-party activities is doubly relevant:
 - (i) the lower the degree of influence that the third parties can exercise on the activities of the association that has adopted the regulations in question, the less likely it is that those regulations may be considered necessary for and/or proportionate to achieving the objectives pursued;
 - (ii) the greater the impact that the regulations in question have on the third parties' economic activity, the more likely it is that those regulations may be considered unnecessary for and/or not proportionate to achieving the objectives pursued (*Rogon 70–72*).

6. No Necessity/Proportionality Without Genuine Participation

- Genuine and meaningful participation by the interested third parties in the procedure by which the regulations in question are adopted would certainly contribute to ensuring their necessity and proportionate nature, in addition to enhancing their legitimacy (*Rogon 73*).

IV. CD Tondela Case

1. No-Poach Agreements and Anticompetitive Object

- No-poach agreements are generally restrictive *by object*, especially between competitors, unless ancillary to a legitimate, non-anticompetitive purpose (*CD Tondela 49*).

2. Pandemic-Related Justification

- The agreement at issue was adopted to preserve the integrity and fairness of the 2019/2020 season during the COVID-19 pandemic (*CD Tondela 56–58*).

3. Conditional Non-Restriction Finding

- A no-poach agreement is not restrictive *by object* if it genuinely aims to ensure fair competition under exceptional circumstances (*CD Tondela 71*).

4. **Public Interest Assessment**

- The referring court must verify that the objective pursued qualifies as a legitimate public interest under EU law and that the actors involved were competent to adopt the measure (*CD Tondela 77*).
- The objective consisting in ensuring the regularity of sporting competitions is a legitimate objective in the public interest that may be pursued by a sporting association (*CD Tondela 79 quoting FIFA-Diarra*).

5. **Necessity Test under *Meca-Medina***

- The referring court must evaluate whether:
 - (i) the agreement addressed an objective need;
 - (ii) it reflected a coherent concern for that goal; and
 - (iii) it was suitable to achieve the intended outcome (*CD Tondela 81–82*).

6. **Proportionality and Alternatives**

- The key issue is whether equally effective but less restrictive alternatives were reasonably available and relatively straightforward in implementation, considering the urgency and context of the pandemic (*CD Tondela 87–89*).

7. **Limited Scope and Duration**

- The agreement's limited scope (geographically, personally, and temporally) and the emergency situation suggest it was proportionate and justifiable (*CD Tondela 88–89*).