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FIFA'S REGULATORY ACTIVITY AND EU COMPETITION LAW: THE FOOTBALL AGENTS' SAGA ADDS ANOTHER CHAPTER TO A COHERENT BOOK

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ABSTRACT: On 16 July 2026, the European Court of Justice (ECJ) has rendered its ruling on a preliminary reference from the German Court of Mainz concerning the compatibility of several provisions of the FIFA Football Agents Regulations (FFAR) with, amongst others, Article 101 and 102 of the TFEU. This ruling is the most recent of a series of judgments touching upon the interplay between sports governance and EU competition law. Though not closing the judicial saga on agents and FIFA's regulation of their activity, it provides rather clear indications on a number of questions which had been raised by the stakeholders, chiefly whether FIFA can regulate the activity of football agents in the first place (thus extending its regulatory powers beyond its 'core mission') and whether some of the new provisions of the FFAR (most notably the fee cap) might be regarded as an infringement of competition. This judgment provides also a further insight into the direction that the relationship between the activity of sports governing bodies and the ECJ seems to have steadily taken: a centralised regulation of football-related matters might be warranted in light of the specific characteristics of the sport and the finding of infringement by object is not hanging over every step that FIFA takes in its capacity of football world governing body. However, and especially if potential conflict of interests is looming (even when the regulations concern an activity over which the regulator does not have a direct economic interest), the legitimate purpose must be obtained with means that can be proven to be adequate and proportionate.

Il 16 luglio 2026, la Corte di giustizia dell'Unione Europea ha emesso la propria sentenza in merito a un rinvio pregiudiziale presentato dal Tribunale di Mainz riguardante la compatibilità di diverse disposizioni del Regolamento FIFA sugli agenti calcistici (FFAR) con, tra gli altri, gli articoli 101 e 102 del TFEU. Tale sentenza è l'ultima di una serie di pronunce che riguardano l'interazione tra la governance dello sport e il diritto della concorrenza dell'UE. Pur non ponendo fine alla saga giudiziaria sugli agenti e sulla regolamentazione della loro attività da parte della FIFA, la sentenza fornisce indicazioni piuttosto chiare su una serie di questioni sollevate dalle parti interessate, in particolare se la FIFA possa regolamentare l'attività degli agenti calcistici in primo luogo (estendendo così i propri poteri normativi al di là della

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sua «missione principale») e se alcune delle nuove disposizioni delle FFAR (in particolare il limite massimo delle commissioni) possano essere considerate una violazione delle regole di concorrenza. Questa sentenza offre inoltre un ulteriore spunto di riflessione sulla direzione che il rapporto tra l'attività degli organi di governo dello sport e la Corte di giustizia dell'Unione Europea sembra aver progressivamente assunto: una regolamentazione centralizzata delle questioni relative al calcio potrebbe essere giustificata alla luce delle caratteristiche specifiche di questo sport e la constatazione di una violazione per oggetto non incombe su ogni passo compiuto dalla FIFA nella sua veste di organo di governo mondiale del calcio. Tuttavia, e soprattutto qualora si profili un potenziale conflitto di interessi (anche quando la normativa riguarda un'attività sulla quale l'autorità di regolamentazione non ha un interesse economico diretto), lo scopo legittimo deve essere perseguito con mezzi che possano essere dimostrati adeguati e proporzionati.

Keywords: *ECJ – FIFA – FFAR – EU competition law – Superleague – ISU – Royal Antwerp – Seraing – Meca-Medina – MOTOE – Restriction by object – Restriction by effect – Abuse of dominant position – SGBs regulatory activity – Football Agents.*

Corte di Giustizia dell'Unione Europea – FIFA – FFAR – Diritto della concorrenza dell'UE – Superlega – ISU – Royal Antwerp – Seraing – Meca-Medina – MOTOE – Restrizione per oggetto – Restrizione per effetto – Abuso di posizione dominante – Attività normativa delle SGB – Agenti calcistici.

Summary:

1. Introduction

Never before has the regulatory activity of Sports Governing Bodies (SGBs) been subjected to such intense EU law scrutiny as in recent times. In the span of two years and a half, the European Court of Justice (ECJ) has issued more judgments touching upon the interplay between sports governance and EU competition law than it did in the previous fifty.[1]

[1] On 21 December 2023, *International Skating Union v. Commission* (C-124/21 P), *European Superleague Company SL v. FIFA & UEFA* (C-333/21) and *UL and SA Royal Antwerp Football Club*

In none of these recent rulings has the ECJ called into question whether SGBs have the right to regulate some matters in which EU competitions law concerns arose. The ECJ has instead criticised the way in which they did so when they laid out provisions attempting to (i) determine the conditions to access sports and the creation of international competitions alternative to the ones supervised by the SGB concerned;[2] (ii) react to the creation of (quasi) football breakaway leagues;[3] (iii) determine the consequences for players' premature breaches of their employment contracts (thus essentially regulating the transfer market system);[4] (iv) create mandatory national quotas (in an attempt to address issues of lack of investment in player training and erosion of local identity emerged in the 'post-Bosman' system);[5] (v) regulate the activity of football agents.[6]

This intense scrutiny has potentially extremely vast consequences for the organisation of European (and global) sport.[7] More or less uniformly around Europe, in fact, the system is structured with one organisation per sport reserving for itself the double prerogative of organising the sport and exploiting the related commercial rights.[8] This, although legitimate *per se*, requires the setting up of particularly strict checks and balances in order for the SGB concerned to pass the 'conflict of interests test' of European Courts.[9] The matter is complicated by the fact that, save for the rules of the game and similar, there is almost no rule issued by the sports regulators that is completely extraneous to economic activity.[10] This means, in practice, that almost none of these rules can escape EU competition

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v. Union royale belge des sociétés de football association ASBL (C-680/21). On 4 October 2024, *FIFA v. BZ* (C-650/22). On 1 August 2025, *Royal Football Club Seraing SA v. FIFA, UEFA and URBSFA* (C-600/23). On 16 July 2026, *FT, RRC Sport GmbH v. FIFA* (C-209/23).

[2] Judgment of 21 December 2023, *International Skating Union v. Commission*, C-124/21 P, ECLI:EU:C:2023:1012.

[3] Judgment of 21 December 2023, *European Superleague Company SL v. FIFA & UEFA*, C-333/21, ECLI: EU:C:2023:1011.

[4] Judgment of 4 October 2024, *FIFA v. BZ*, C-650/22, ECLI:EU:C:2024:824.

[5] Judgment of 21 December 2023, *UL and SA Royal Antwerp Football Club v. Union royale belge des sociétés de football association ASBL*, C-680/21, ECLI:EU:C:2023:1010.

[6] Judgment of 16 July 2026, *FT, RRC Sport GmbH v. FIFA*, C-209/23, ECLI:EU:C:2026:597.

[7] This does not only happen in sport, a naturally transnational phenomenon, whereby global organizations the like of FIFA lay down rules which, whilst applicable worldwide (i.e. beyond Europe), cannot avoid to account for the EU market and its rules. This is a phenomenon that concerns every economic activity (sometimes also purely non-EU). This phenomenon, also referred to as the 'Brussels effect', refers to the process of EU regulations and ECJ decisions spreading beyond European borders. On the reasons why, by regulating its own market, the EU essentially exercises a global regulatory power see A. Bradford, *The Brussels Effect: How the European Union Rules the World*, Oxford University Press, 2020.

[8] *See*, *inter alia*, P. Ibáñez Colomo, *Competition Law and Sports Governance: Disentangling a Complex Relationship*, 7 June 2022. Available at SSRN: https://ssrn.com/abstract=4130043 or *http://dx.doi.org/10.2139/ssrn.4130043*.

[9] *See*, *inter alia*, *International Skating Union v. Commission*, Case C-124/21 P.

[10] S. Weatherill, *The impact of the rulings of 21 December 2023 on the structure of EU sports law*, Int Sports Law J 23, 409–415, 2023, available at *https://doi.org/10.1007/s40318-024-00265-w*.

law scrutiny. In any such case, EU public policy too is at stake (as competition law is part of the *«ordre public»* in Europe),[11] determining in turn the need to safeguard effective judicial review with respect to the relevant decisions (which is to say, almost invariably, the awards of the Court of Arbitration for Sport).[12]

The material for debate is abundant. This contribution will focus the attention solely on the regulation of an activity that, although somewhat peripheral to FIFA's core mission, is particularly relevant in the football ecosystem: agents.

2. *The football agents' regulatory journey*

Even though public attention has only recently turned to it, the activity of football agents has been on a regulatory rollercoaster over the last 30 odd years.

On 20 May 1994, FIFA introduced for the first time a set of rules aimed at regulating agents' services (the "1994 RGPA").[13] The 1994 RGPA, which entered into force on 1 January 1996, provided for a relatively light framework: a license issued by FIFA (or by the competent national association for domestic transfers only) was required for individuals wishing to provide agent's services;[14] only natural persons could provide agent's services;[15] clubs and players were obliged to carry out transactions only via FIFA licensed agents[16] and the duration of the representation agreement could not exceed two years (though renewable).[17]

Following complaints raised before the EU Commission,[18] FIFA introduced a new set of regulations in 2001.[19] The revised RGPA (2001 RGPA) still required a license (however issued by the competent national association) in order to provide agent's services; individuals wishing to provide agent's services had to show an impeccable reputation and take a written examination to test their knowledge of the industry.[20] The duration of the representation agreement was still two years (renewable). However, instead of providing for a deposit obligation (in the amount of CHF 200,000), the new rules provided for the obligation of a liability insurance, which satisfied the concerns that the EU Commission had at the time. As a consequence of the introduction of the 2001 RGPA, the EU Commission closed the investigations it had opened following the complaints.[21]

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[11] *See* Judgment of 1 June 1999, *Eco Swiss China Time Ltd v Benetton International NV*, C-126/97, ECLI:EU:C:1999:269, paragraphs 36-39.

[12] *See,* in this sense, *International Skating Union v. Commission,* C-124/21 P*,* and *Royal Football Club Seraing SA v. FIFA, UEFA and URBSFA,* C-600/23.

[13] The 1994 RGPA are available at *http://www.inside.fifa.com/*.

[14] Article 1, paragraph 1 and 1, paragraph 3 of the 1994 RGPA (players' relatives and qualified lawyers were exempted).

[15] Article 2, paragraph 3 of the 1994 RGPA.

[16] Article 1, paragraph 2 of the 1994 RGPA.

[17] Article 13 paragraph 2 of the 1994 RGPA.

[18] One of the complaints had been that the ban on players and clubs using the services of agents not licensed by FIFA was anticompetitive.

[19] The 2001 RGPA are available at *http://www.inside.fifa.com/*.

[20] Article 2, paragraph 2, ArticleS 6 and 7 of the 2001 RGPA.

[21] *See* at *https://ec.europa.eu/commission/presscorner/detail/en/ip_02_585*.

A French agent, Laurent Piau, challenged the Commission's decision, arguing *inter alia* that the provisions in question were contrary to EU competition law on the ground of, amongst others, restriction of access to the agent occupation by means of the license procedure and the requirement of a deposit obligation. The EU General Court (the 'GC') found that the 2001 RGPA constituted a decision by an association of undertakings in the sense of Article 101 TFEU which was susceptible to EU competition law scrutiny and that the licensing system put in place by FIFA had an impact on the access to economic activity and thus had to be scrutinised in the light of competition law (in accordance with the then Article 81(3) TEC, now 101(3) TFEU).[22] That said, the GC considered, first, that the EU Commission was right in holding that it had obtained from FIFA the repeal of the most restrictive provisions contained in the original regulations. Second, it concluded that the licensing system did not eliminate competition but rather guaranteed the attainment of the objective of raising professional standards in the sector of agents' services.[23] Consequently, the GC found that the EU Commission had not erred in discontinuing its investigation due to the rules not breaching the relevant TFEU provisions.[24]

On 1 January 2008, FIFA issued a newly revised set of rules to regulate agents' activity.[25]

The 2008 RGPA provided for a more detailed framework pursuant to which, *inter alia*, in addition to the exam and the license requirements,[26] agents could only represent the interests of one party per transaction,[27] and their remuneration was calculated on the basis of the player's annual basic gross income, including any signing-on fee that the agent had negotiated for the player in the employment contract.[28] In the absence of agreement on the amount of remuneration, the agent was entitled to a payment of 3% of the player's basic income.[29]

On 21 March 2014, the then FIFA Executive Committee decided that FIFA would cease to regulate the activities of players' agents on an international basis. On 1 April 2015, FIFA issued the "Regulations on Working with Intermediaries", as a result of which the task of overseeing and regulating the activity of agents was delegated to the national level (the 'deregulation').

A couple of years later, FIFA considered a regulatory revival necessary.

In 2017, FIFA started a lengthy consultation process with football stakeholders which culminated in the drafting of a new set of regulations concerning agents.

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[22] Judgment of the Court of First Instance of 26 January 2005, *Laurent Piau v Commission*, T-193/02, ECLI:EU:T:2005:22, paragraphs 73-78.

[23] *See* S. Bastianon - M. Colucci, *The European Union and Sport Handbook*, SLPC, III ed., 2026.

[24] Mr Piau appealed against the GC's ruling; however his appeal was dismissed by the ECJ on procedural grounds.

[25] The 2008 RGPA are available at *http://www.inside.fifa.com/*.

[26] Article 2, paragraph 2, Article 4 and Article 8 of the 2008 RGPA.

[27] Article 19, paragraph 8 of the 2008 RGPA.

[28] Article 20, paragraph 1 of the 2008 RGPA.

[29] Article 20, paragraph 4 of the 2008 RGPA.

On 16 December 2022, the FIFA Council adopted the Football Agents Regulations (FFAR), which entered into force on 1 October 2023.[30]

The FFAR were a more substantial and penetrating set of rules that any of those adopted prior to the 'deregulation', introducing (i) a number of provisions on agents' remuneration (a 'service fee cap' rule, the so-called 'client pays' rule, the '50% payment' rule, the 'salary actually received' rule and the 'future transfer' rule);[31] (ii) provisions on license requirements;[32] (iii) provisions on multiple representation;[33] (iv) provisions concerning 'poaching' players.[34]

The fact that over the years FIFA took different approaches and even reconsidered its position on the issue of whether regulating the matter or not testifies to the sensitivity of the assessments involved in the decision-making process. Like in other fields where FIFA intervened, however, these assessments concerned solely whether a regulatory intervention would yield more benefits than drawbacks as per FIFA's (and the consulted stakeholders') appreciation.

It was never whether and to what extent FIFA could actually do it in the first place.

Until it was.

3. *SGBs' regulatory activity under the spotlight*

As early as 2008, when a Greek motorsports-related matter was brought to its attention, the ECJ explicitly clarified that SGBs could enjoy a position of monopoly in the regulation of their respective sport – and that they could do so in parallel to the economic exploitation of the related rights only insofar as certain boundaries were set.[35]

In *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio, Case C-49/07 (MOTOE)*,[36] the ECJ started investigating the nature of EU law's review of sporting governance "*whenever it spills over into commercially relevant choices*".[37] The ECJ did not call into question the SGB's

[30] They had already entered into force on 9 January 2023 with respect to the provisions relating to the process of obtaining a licence.
[31] Articles 12, 14, 15, 16 FFAR.
[32] Article 5 FFAR.
[33] Article 12 FFAR.
[34] Article 16 FFAR.
[35] The two major cases brought before the attention of the ECJ until that moment, especially *Bosman*, had centered around potential violations of the freedom of movement, whereas in 2002, when it assessed the UEFA rule concerning multi-club ownership, the EU Commission did not pursue the matter further as it found that the rule, while capable of falling within the scope of (what would become) Article 101 TFEU, was aimed at preserving the integrity of the competition. *Meca-Medina*, on the other hand, while a crucial decision, did focus on a relatively narrow aspect (doping).
[36] Judgment of 1 July 2008, *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, C-49/07, ECLI:EU:C:2008:376.
[37] S. Weatherill, *The EU as a sports regulator*, in J. Nafziger and R. Gauthier (eds), Handbook on International Sports Law, 2nd edition, Edward Elgar Publishing.

regulatory gatekeeping function *per se*, it did so only insofar as this was intertwined with commercially sensitive decision-making.[38] What came under scrutiny for the first time in *MOTOE* was, in other words, the so-called sports governance.[39]

MOTOE was the Greek Motorcycling Federation, and it was at the time planning to organize a motorcycling competition in Greece. In order to do so it had to apply for a license to ELPA, a non-profit organization which was given the monopolistic power to grant consent for the organization of motorcycling events by the Greek Minister for Public Order. ELPA – which was itself organizing motorcycling events in Greece and commercially exploiting them at the same time – refused to consent and thus MOTOE did not obtain the authorization from the Ministry. Consequently, MOTOE filed a claim before the Greek courts invoking the violation of Article 102 and 106 TFEU.[40]

The ECJ preliminarily confirmed that: (i) ELPA constituted an undertaking regardless of (a) its classification as non-profit organization under Greek law and (b) the fact that it was vested with public powers, since it was organizing and marketing events in competition with other undertakings which were seeking to make a profit;[41] (ii) ELPA was dominant in the sense of Article 102 TFEU, as it had a position of strength giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.[42] That said, the problem was not that ELPA had a dominant position *per se*, but the fact that there was a risk of abuse in the exercise of its rights because of the discretion that was left to the regulatory body in such exercise.[43] Indeed, as ELPA was not only regulating the sport but also commercially exploiting motorcycling events itself, it was placed at an obvious advantage over its competitors. Crucially, this did not mean that ELPA had to 'divest' one of its functions (either the commercial or the regulatory one), but – in order not to infringe Article 102 TFEU – it had to ensure that its regulatory power was made subject to effective restrictions, obligations and review.[44]

These findings had the potential to interest the sports industry at large as many other sports associations (UEFA and FIFA included) shared the same 'double hat' structure assessed by the ECJ.

This latent conflict remained nonetheless dormant for quite a few years. Namely, until 21 December 2023, when the ECJ issued the notorious judicial

[38] Ibid.
[39] The most famous EU sports judgment until then, *Bosman*, did not enter into discussions of EU competition law.
[40] The case involved Article 106 TFEU as well, as the Greek state was granting a private association (ELPA) the exclusive right to issue licenses necessary to obtain the authorization from the Ministry to organize motorcycling events.
[41] *Motosykletistiki Omospondia Ellados NPID (MOTOE) v Elliniko Dimosio*, C-49/07, paragraphs 25-33.
[42] Ibid., paragraph 37.
[43] Ibid., paragraphs 49-50.
[44] Ibid., paragraphs 50-51.

hat-trick that shook the world of EU sports law: *International Skating Union v. Commission* (hereinafter, "*ISU*"), *European Superleague Company SL v. FIFA & UEFA* (hereinafter, "*Superleague*") and *UL and SA Royal Antwerp Football Club v. Union royale belge des sociétés de football association ASBL* (hereinafter, *"Royal Antwerp"*).

ISU and *Superleague* in particular turned out to be crucial judgments.

One limb of *ISU* tackles, just like *MOTOE*, the conflict of interest between regulatory and commercial functions within the same entity. The other limb assesses the compatibility of ISU's Arbitration Rules (i.e., the provisions establishing that, in case of disputes, the relevant ISU decision would have had to be appealed at the CAS) with EU law.

For the purpose of this discussion, focus is placed only on the first.[45]

The rules which fell under EU competition law scrutiny were those determining the conditions in which athletes could take part in skating competitions (i.e., the 'Eligibility Rules') and those setting out the procedure to follow in order to obtain from the ISU the authorisation to organise international skating competitions (i.e., the 'Prior Authorisation Rules').

To begin with, the ECJ recalled that, when assessing whether a practice is inherently incompatible with Article 101 TFEU, the economic and legal contexts always matter[46] (thus rejecting a formalistic approach in favour of a contextually sensitive assessment[47]). Moreover, the ECJ reiterated that (i) the concept of restriction by object must be interpreted strictly (as it was already pointed out, amongst others, in *Generics (UK) and Others(C-307/18, EU:C:2020:52)*;[48] (ii) attention must be paid not to conflate object and effect in the assessment of the former;[49] (iii) subjective intentions of the undertaking(s) concerned are irrelevant;[50] (iv) the *Wouters/Meca Medina* test

[45] The fact that it is outside of the main scope of this contribution should not induce the reader into thinking that the second limb is not seminal. To the contrary, it essentially questioned the compatibility of the entire sports arbitration system with EU law with potentially far-reaching repercussions (see *International Skating Union v. Commission*, C-124/21 P, paragraphs 184 et ss.). However, recently the ECJ in *Royal Football Club Seraing v Fédération internationale de football association (FIFA) and Others* (C-600/23) touched again upon the issue with partly different conclusions.

[46] *International Skating Union v. Commission*, C-124/21 P, paragraph 96: "*The specific characteristics of an economic sector may potentially be taken into account, along with other elements and provided that they are relevant, in the application of Article 101 TFEU and more especially when examining the question whether a particular type of conduct should be considered as having as its 'object' or, failing that, 'effect', the prevention, restriction or distortion of competition, in the light of the economic and legal context of which it forms a part and the 'actual conditions' or 'actual context' that characterise the structure and functioning of the sectors or markets concerned* […]".

[47] *See* S. Weatherill, '*The EU as a sport regulator*' in J. Nafziger and R. Gauthier (eds), Handbook on International Sports Law, 2nd edition, Edward Elgar Publishing.

[48] *International Skating Union v. Commission*, C-124/21 P, paragraph 102: *"*[…] *that concept must be interpreted as referring solely to certain types of coordination between undertakings which reveal a sufficient degree of harm to competition for the view to be taken that it is not necessary to assess their effects. Indeed, certain types of coordination between undertakings can be regarded, by their very nature, as being injurious to the proper functioning of normal competition* […]*"*.

[49] Ibid., paragraph 106.

[50] Ibid., paragraph 107.

does not apply to restrictions by object (in these situations the only applicable exception being Article 101(3) TFEU).[51]

As far as the federation's structure and its operation vis-à-vis the EU competition law framework was concerned, the ECJ applied the *MOTOE* case law, which flagged a potential conflict of interest in the statutory double prerogative (regulatory and commercial) of the federation.[52] And, as in *MOTOE*, it was found that the way out of the infringement for the SGB concerned is to put in place a transparent regulatory framework.[53] One that ensures that the regulatory powers are subject to restrictions, obligations and review. But as they were drafted, the ISU Eligibility and Prior Authorisation Rules had to be regarded as having as their object the restriction of competition.[54]

Superleague carried out a similar assessment, this time in relation to FIFA's and UEFA's reaction to the attempt by a private company (European Superleague Company SL) to set up a new international football competition. Following the launch of this (quasi) breakaway league project, FIFA and UEFA (followed by the English, Spanish and Italian football associations) declared that professional clubs and players taking part in such alternative competition would be expelled from competitions organised by FIFA and UEFA (and players would be denied the opportunity to represent their national teams).

To start with, the ECJ in *Superleague* clarified, probably once and for all, the role of sport in the light of Article 165 TFEU (i.e., the article concerning the EU's action in the field of sport). The ECJ underlined that said provision cannot be relied upon in order to justify a *tout court* escape from EU law scrutiny. What that provision does by recognising the specific characteristics of sport, instead, is to set the context in which the assessment of a potential infringement of EU competition law must be assessed.[55]

It also underlined that Article 101 and 102 TFEU (which can be simultaneously applicable to the same conduct) concern FIFA and UEFA inasmuch as these associations of undertakings carry out the notorious twofold regulatory/economic activity.

In brief, the ECJ found that it is legitimate (i) to subject the organisation and conduct of international professional football competitions to common rules which have the aim of guaranteeing homogeneity; (ii) to ensure compliance with these common rules by means of 'prior approval' regulations and (iii) to introduce sanctions aimed at guaranteeing the effectiveness of those rules. It is not legitimate, however, to adopt rules on prior approval and participation which are, in a general way, not subject to restrictions, obligations and review that are capable of eliminating the risk of abuse of a dominant position and, more specifically, where there is no

[51] Ibid., paragraph 113.
[52] Ibid., paragraph 125.
[53] Ibid., paragraphs 131, 135 and 137.
[54] Ibid., *inter alia* paragraph 148.
[55] *European Superleague Company SL v. FIFA & UEFA*, C-333/21, paragraphs 95-106.

framework for substantive criteria and detailed procedural rules for ensuring that they are transparent, objective, precise and non-discriminatory, when they confer on the entity called on to implement them the power to deny any competing undertaking access to the market.[56]

In essence, both rulings certified that SGBs do not enjoy unlimited freedom in their regulatory activity. Quite the contrary, though it is recognised that they operate in a special environment (sport), this environment is not so special as to exempt them from scrutiny altogether.[57]

This did not mean that SGBs (and their functioning) as we had known them until then were doomed to disappear either.

The ECJ does not consider a problem the fact that SGBs regulate sport in a position of monopoly (the, often inappropriately invoked, 'specificity' of sport might indeed suggest that this structure is suited to achieve certain goals of organised sport). It is not a problem either that they contextually exploit the commercial rights related to the sport they govern. The combination of the two, however, poses inherent problems of conflict of interest, especially considering the discretion with which they exercise their regulatory powers. This circumstance demands tight checks in terms of transparency. What was requested from SGBs, then, was not to give up any of their prerogatives but to put 'more attention' (put it mildly) to the way in which they drafted their rules.

Only a framework that guarantees that the rules in question (i) are laid down in an accessible form prior to implementation; (ii) provide for prerequisites not different (in theory and in practice) from those applying to the competitions organised by the decision-making entity; (iii) provide for transparent, objective, precise and non-discriminatory criteria; and (iv) provide for proportionate and determined sanctions, would pass the EU law test.

Not long after *Superleague*, FIFA's regulatory powers came under further scrutiny in *Diarra*.[58]

This judgment tackled the main rule indirectly governing the functioning of the international transfer system: Article 17 of the FIFA Regulation on the Status and Transfer of Players (RSTP).[59] In brief, the *Diarra* judgment criticised three elements characterising the system enshrined in the first few paragraphs of Article 17 RSTP: (i) the way in which compensation for breach of contract was determined; (ii) the automatic joint liability of the player's new club for the premature

[56] Ibid., *inter alia* paragraph 178.
[57] *See* S. Weatherill, *The impact of the rulings of 21 December 2023 on the structure of EU Sports law*, The International Sports Law Journal, 2023.
[58] *FIFA v. BZ*, Case C-650/22, EU:C:2024:824. Available at *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CC0650*.
[59] It also tackled Article 9, paragraph one and Article 8.2.7 of Annexe 3 of the RSTP, i.e. the procedure concerning the release of the International Transfer Certificate (ITC) when there is an underlying dispute relating to a breach of contract. However, this was never a particularly delicate issue as in practice FIFA was already always authorizing the transfer by means of a provisional ITC even in situations of pending contractual disputes. It is therefore not assessed in the paper.

unlawful breach of his previous contract and (iii) the rebuttable presumption that the new club induced the player in doing so in order for FIFA to impose sanctions on the new club. From an EU competition law perspective, a system of this kind – whereby prospective new clubs faced the threat of automatic financial joint liability and presumption of inducement legitimising sporting sanctions essentially without direct proof of their involvement in the underlying contractual breach – was considered to *de facto* create non-poaching agreements between clubs.[60]

The *Diarra* judgment led FIFA to launch a consultation process with the stakeholders in order to revisit Article 17 RSTP and put it in line with the indications received from Luxembourg. Currently, the system is governed by an interim regulatory framework which attempts to bring it in line with EU law.[61]

FIFA's approval of the FFAR, and what followed before several state and arbitral tribunals, occurred in the midst of a systemic clash between two realms – sports governance and EU – that had, for some reason, only sporadically emerged in the last fifty years (that is to say, from *Walrave and Koch*).[62]

4. *FIFA approves the FFAR: a European judicial battleground follows suit*

On 16 December 2022, the FIFA Council adopted the FFAR, which entered into force on 1 October 2023.[63] This regulatory intervention put FIFA at the centre of an unprecedented judicial battleground. Various stakeholders brought claims before European national courts and arbitral tribunals in order to strike down some of its provisions (especially the ones concerning the agents remuneration and, amongst these, most prominently the service fee cap), in view of alleged violations of EU competition law.

The matter arrived early on at the CAS too.

On 19 December 2022, the Professional Football Agents Association (PROFAA) filed a Request for Arbitration and, on 28 February 2023, a Statement of Claim on the grounds that some provisions of the FFAR allegedly violated a number of rules of Swiss competition law, EU law (such as Article 16 of EU Directive 2006/123/EC on Services in the internal market) and EU competition law.[64]

In the relevant award, and with respect to questions of EU competition law, the panel firstly assessed whether FIFA could extend its regulatory powers

[60] *FIFA v. BZ*, Case C-650/22, paragraphs 145-146.

[61] *See* S. P. Spera, *FIFA's Regulatory Response since Diarra*, in Football Legal #23, Special Report. It is to be noted that FIFA has approved a new framework for Article 17 RSTP which will enter into force on 1 January 2027.

[62] Judgment of 12 December 1974, *B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo*, Case 36-74, ECLI:EU:C:1974:140.

[63] On 9 January 2023 with respect to the provisions relating to the process of obtaining a licence.

[64] CAS 2023/O/9370, *Professional Football Agents Association (PROFAA) v. FIFA*, Award of 24 July 2023.

beyond the task of governing the sport of football itself and cover "peripheral economic activities".[65] While noting that the question had been left open in *Piau*,[66] the panel concluded that the activity of agents could not be properly defined as being only "peripheral" to the world of football (thus, essentially, still leaving the general question open), since agents – representing the interests of clubs and players – engage in one of the core aspects of the entire football system: the market for players' services. Hence, according to the panel, FIFA could regulate agents for the same reason it is entitled to regulate players.[67]

With specific regard to the various provisions of the FFAR and their compatibility with Article 101 and 102 TFEU, the panel preliminarily confirmed what had been already determined by the ECJ with respect to FIFA's status vis-à-vis EU competition law. Namely, that (i) FIFA qualifies as an 'association of undertakings' for the purposes of those provisions[68] and that (ii) FIFA holds a 'collective dominant' position under Article 102 TFEU in the relevant market of football agents' services.[69]

Crucially, with respect to the legal test to be carried out, the panel ruled in favour of FIFA. It considered that (iii) the FFAR's compatibility with EU competition law had to be carried out in the light of the *Wouters/Meca-Medina* framework in relation to Article 101 and 102 TFEU;[70] (iv) FIFA enjoyed a certain margin of appreciation when adopting the FFAR;[71] (v) the service fee cap (i.e., Article 15, paragraph 2 of the FFAR) does not qualify as a restriction 'by object' but as a restriction 'by effect'[72] and needs to be justified under the *Wouters/Meca-Medina* test.[73]

When assessing whether Article 15, paragraph 2 of the FFAR: (i) pursued legitimate objectives recognised by the EU legal order;[74] (ii) was appropriate to pursue those objectives,[75] and (iii) was proportionate,[76] (i.e., the three cumulative requirements of the *Wouters/Meca-Medina* test), the panel concluded in the affirmative with respect to each of them.

Other tribunals in various jurisdictions across Europe did not reach the same conclusion.

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65 Ibid., paragraphs 171 et ss.
66 *Piau v. Commission,* Case T-193/02*,* later upheld by the ECJ (see Order of the Court of 23 February 2006, *Laurent Piau v Commission of the European Communities,* C-171/05 P, ECLI:EU:C:2006:149).
67 CAS 2023/O/9370, paragraph 179.
68 Ibid., paragraphs 190-199.
69 Ibid., paragraphs 200-207.
70 Ibid., paragraphs 208-220.
71 Ibid., paragraphs 221-226.
72 Ibid., paragraphs 234-242.
73 Ibid., paragraphs 243-258.
74 Ibid., paragraphs 283-288.
75 Ibid., paragraphs 289-297.
76 Ibid., paragraphs 298-310.

In Germany, the matter was brought before the courts of Mainz and Dortmund. The former proceedings resulted in the preliminary reference to the ECJ (*RRC Sports*);[77] the latter in an injunction blocking the implementation of the FFAR pending the Mainz preliminary reference.[78]

The Central Netherlands District Court, for its part, did not see a reason to impose an interim measure concerning the implementation of the FFAR pending the preliminary referral to the ECJ.[79]

The Madrid Commercial Court, before which a claim was filed on the same grounds of alleged violation of EU competition law, blocked the provisions on the fee cap as deemed to be a restriction by object.

Challenges emerged in England too via the FA Rule K arbitration. An arbitral tribunal in that context found that some provisions of the FFAR were in breach of UK competition law. The Rule K arbitral tribunal (the 'tribunal') found, by and large, that the relevant provisions of the FFAR do not fall within the *Wouters/Meca-Medina* principle as not directly linked to a fair conduction of the sport (i.e., a legitimate objective) but rather to purely financial considerations (such as the skyrocketing increase of agents' fees) only *ex post* justified in view of maintaining the regularity of the sport.[80] Moreover, the tribunal expressly disagreed with the CAS award concerning the qualification of the service fee cap as not a restriction by object. In that context, the tribunal pointed out that the CAS award did not give any consideration to the point that the fee cap operates as buyers' cartel but rather analysed it as if it were equivalent to the imposition of a maximum resale price imposed by an individual supplier pursuant to a vertical agreement with the reseller. The tribunal also noted that the CAS did not have access to all the evidence obtained through the process of documentary disclosure showing the genesis and the context in which the fee cap was adopted (important for a determination regarding the object of an agreement or practice).[81]

In view of the mounting pressure in the various jurisdictions and the inconsistency of the judgments and awards rendered, on 30 December 2023 FIFA decided to suspend the implementation of the provisions of the FFAR with *"a link to the European Union"*, pending the decision of the ECJ on the German preliminary referral.[82]

5. *The matters before the ECJ*

Two German cases on agent services eventually ended up at the ECJ for a preliminary ruling.

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[77] *See infra* for the decision of the Court.

[78] District Court of Dortmund in Germany, procedure LG Dortmund, 8 O 1/23 (Kart).

[79] Available at *https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBMNE:2023:2078*.

[80] The Rule K arbitral tribunal decision is available on website of The FA.

[81] Ibid., paragraph 287.

[82] FIFA Circular no. 1873.

The first concerned regulations governing the activities of players' agents (RfSV) adopted by the German Football Association (DFB) in the wake of FIFA's deregulation. The RfSV, among other things, (i) required a registration obligation on agents; (ii) required agents to declare being subject to the rules of FIFA, DFB and the German Football League, (iii) prohibited commission for agent services in respect of minors, (iv) prohibited the sharing of club's future transfer proceeds for agents and (v) imposed fee disclosure obligations. Two undertakings involved in providing representation services to football players and the managing director of one of these firms started pursuing a claim for cease and desist against the DFB with respect to some of these provisions. The matter arrived at the German Federal Court of Justice, which stayed the proceedings and referred questions to the ECJ for preliminary ruling.

The second concerned an action for injunction filed by an agent ('FT') and a company based in Germany ('RRC Sports') before the Regional Court of Mainz (Germany), seeking to bar the application of several provisions of the FFAR. The Court referred a preliminary question to the ECJ on the compatibility of these provisions with Article 101 and 102 TFEU. As seen above, this prompted other tribunals before which similar matters were pending, as well as FIFA itself, to put the issue on hold and wait for clarifications from Luxembourg.

5.1 Advocate General Emiliou's indications in his opinions of 15 May 2025

On 15 May 2025, Advocate General (AG) Emiliou rendered his opinion on the two aforementioned matters, i.e. *C-428/23, ROGON and Others* (hereinafter, "*Rogon*") and *C-209/23 FT, RRC Sports GmbH v FIFA* (hereinafter, "*RRC Sports*"), as well as on the case *C-133/24, CD Tondela and Others* (hereinafter, "*Tondela*"), which he considered raising largely similar issues. While only two of them (Rogon and RRC Sports) concerned agents, the AG rendered the three opinions in conjunction (and with several cross-references), with the aim of providing, beyond the particularities of the single cases, an overview of:

(i) the concept of restriction by object, with specific reference to no-poach agreements (*Tondela*);

(ii) the origin and application of the *Meca-Medina* case law (*Rogon*);

(iii) the regulation of some aspects of the activity of football agents at the hands of the football global regulator (*RRC Sports*).

For the purpose of this contribution, a brief account will be given of only the opinions concerning the agents' cases.

5.1.1 The Rogon Opinion: an analysis of the Meca-Medina case law

In essence, the German Federal Court of Justice filed a request for preliminary ruling to the ECJ, requesting whether the *Meca-Medina* case law can be applied.

The *Meca-Medina* test requires to verify whether (i) the rules are justified by the pursuit of one or more legitimate objectives in the public interest which are not per se anticompetitive; (ii) the specific means used to pursue those objectives are genuinely necessary for that purpose; (iii) the inherent anticompetitive effect does not go beyond what is necessary, in particular by eliminating all competition.

In this Opinion, the AG discussed at length the origin, logic and scope of the *Meca-Medina* case law, recalling that the ECJ had already taken stock of it in *Superleague*, ultimately clarifying that such case law does not apply to conducts which are found to be anticompetitive by object. The AG sees, by no accident, striking similarities between the general principles underpinning the case law of ancillary restraints and the conditions of the *Meca-Medina* test.[83] The difference being that, while in the ancillary restraints case-law the objective of the main transaction is either market neutral or even procompetitive, in *Wouters*/ *Meca-Medina* situations a market-related objective coincides with one that is legitimate in the public interest.[84]

What sets apart these situations is, in the AG's view, the public authorities' decision (whether formal or informal, express or tacit) to leave the organisation of certain matters (such as sport) to self-regulation (for instance because deemed beneficial for customers too). This necessarily entails the recognition of a "*somewhat wider room for manoeuvre*" in the setting up of the applicable rules and standards than what other undertakings (pursuing purely commercial objectives) enjoy.[85] This relatively benign treatment does not mean, however, an indiscriminate green light, as these rules might create competition law concerns. Hence, only those rules which pursue a legitimate objective in the public interest can fall outside the scope of Article 101(1) TFEU provided that a number of conditions are satisfied.[86] The interest must be considered to deserve protection within the EU legal order. But it is not always easy to reconcile SGBs' primary objectives of economic and private nature with a public interest of a non-economic nature. This is the reason why claims of public interest must be verified with concrete evidence, showing that – in the context in which it was adopted –

[83] Opinion of AG Nicholas Emiliou, delivered on 15 May 2025, *ROGON GmbH & Co. KG and Others v Deutscher Fußballbund eV (DFB)*, C-428/23, ECLI:EU:C:2026:563, paragraph 31. AG Emiliou noted that both in *Wouters* (paragraph 109 of the judgment) and in *Meca-Medina* (paragraphs 42 and 47 of the judgment), the Court considered a relevant precedent to be the judgment of 15 December 1994, *DLG* (C-250/92, EU:C:1994:413), in which the ancillary restraint doctrine was found to be applicable. The three conditions of the 'ancillary restraint' doctrine are: (i) the main operation must not be inherently anticompetitive; (ii) the restriction must be 'necessary' for the implementation of the main operation (its absence would thus prevent the main operation from being implemented in the first place); and (iii) the restriction must be 'proportionate' to the objectives underlying the main operation (i.e., there are no realistic alternatives which are less restrictive of competition).

[84] In *Wouters* was the sound administration of justice, in *Meca-Medina* the health of athletes and the protection of the integrity of completions and ethical values in sport.

[85] Opinion of AG Emiliou in *ROGON GmbH & Co. KG and Others v Deutscher Fußballbund eV (DFB)*, C-428/23, paragraph 41.

[86] When this is not the case, the only justification can be found in the light of Article 101(3) TFEU.

the measure in question was genuinely designed in order to significantly contribute to the specific interest pursued.[87]

This is also the reason why the *Meca-Medina* case law cannot apply to practices which are inherently anticompetitive. In such situations, it is the overall practice – i.e., its economic rationale – that is fundamentally contrary to EU competition law. By definition, therefore, there cannot be any ancillary anti-competitive dimension to speak of.

That said, the AG enquired whether the *Meca-Medina* test can apply to regulations which restrict the freedom of action of non-associated undertakings. The rules at issue have, in fact, effects on a market upstream of that in which the members of the association concerned are active, which is the market of agents' services. The question then is how to deal with rules that affect economic activities beyond the core mission of the association enacting them. Once again, a contextually sensitive assessment seems to be necessary. The AG noted that in the football ecosystem a number of economic operators (players, clubs, coaches, agents, associations etc) need to interact for the system to appeal to the end consumers.[88] The test is then to verify to what extent the activity of the category in question, *in casu* the agents, has an impact on the core mission of the SGB concerned, that is to say the fairness of competition (or athletes' performance and health). Hence, the higher the degree of connection between the SGB's core activities and the third party's activities (be it upstream or downstream the SGBs core activities), the more likely it is that regulations impacting on them might be considered necessary to pursue the SGB's legitimate goals.

5.1.2 The 'RRC Sports Opinion': FIFA has a certain room for manoeuvre

This case concerned fourteen different provisions of the FFAR which had been singled out as potentially anticompetitive and requiring guidance via a preliminary referral: (i) rules concerning agents' remuneration (such as the 'service fee cap' rule, the 'client pays' rule, the '50% payment rule, the 'salary actually received rule'); (ii) rules concerning the agents' license; (iii) rules concerning multiple representation (precluding triple representation and certain dual representation); (iv) rules concerning making an approach; (v) rules concerning the submission and disclosure of information.

Also considering the complexity of the legal end economic context, the AG did not venture into providing a clear-cut and final assessment of the compatibility of each of the contested provisions with EU law but rather some clarifications in order for the referring court to make this assessment.

As a preliminary point, the AG clarified that EU courts are not concerned with sports rules which do not have any detectable impact on matters governed by

[87] Opinion of AG Emiliou in *ROGON GmbH & Co. KG and Others v Deutscher Fußballbund eV (DFB)*, C-428/23, paragraph 50.
[88] Ibid., paragraph 65.

EU law. Concerning competition law, only a handful of sports rules are completely disentangled from any economic considerations (the rules of the game for instance). Moreover, the AG underlined that SGBs often wear both the 'hat' of the undertaking (competing with other undertakings active in the market concerned) and that of regulator (drafting the rules under which competition takes place).[89] This, as found out already in *MOTOE*, can be problematic.

The issue concerned both Article 101 and 102 TFEU (which can simultaneously apply to the same set of rules and/or practices if the respective conditions of application are met, as indicated in *Superleague*).[90]

Concerning the former, the AG suggested the referring Court to structure its analysis as follows: (i) first ascertain whether the rules in questions give rise to a restriction of competition by object, since, if that is the case, then they can be exempted only if they fulfil the cumulative requirements of Article 101(3) TFEU; (ii) if they do not, then ascertain whether they may be justified on the basis of the *Wouter/Meca-Medina* case law. If the rules under scrutiny cannot be justified under this case law, then they can only be exempted under the stricter requirements of Article 101(3) TFEU.[91]

That said, the AG indicated the rules on agents' remuneration as the ones deserving the most careful assessment as it is well known that agreements between competitors concerning prices are generally considered to be harmful to competition. However, in the case at hand the AG did not see an obvious impact on competition due to the following considerations.

To start with, the AG recalled that the rules at issue did not concern fixed or minimum prices but introduced a maximum rate. In the latter case, the harm to consumer was not as obvious as in the former as competition was still clearly possible by reducing prices.[92] The AG did not agree with the Commission's view that the rules at issue were equivalent to a buyer's cartel (on the part of football clubs).[93] The fact that the rules at issue were public and transparent, in the AG's view, took away the most salient aspect of a buyer's cartel and made them closer to a joint purchasing agreement.[94] Moreover, the maximum rate introduced was not fixed, but linked to the transfer fee or the player's salary. All these considerations suggested that these rules were not to be labelled as anticompetitive by object on the basis of the experience gathered with respect to different categories of agreements but required an in-depth analysis of the legal and economic context in which they operate.

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[89] Opinion of AG Emiliou, delivered on 15 May 2025, *FT and RRC Sports GmbH v Fédération internationale de football association (FIFA)*, C-209/23, ECLI:EU:C:2026:597, paragraph 31.

[90] *European Superleague Company SL v. FIFA & UEFA*, C-333/21, paragraph 119.

[91] Opinion of AG Emiliou, *FT and RRC Sports GmbH v Fédération internationale de football association (FIFA)*, C-209/23, paragraphs 46-52.

[92] Ibid., paragraphs 57-58.

[93] Ibid., paragraph 60 (in this sense, the AG's opinion differs also from the findings of the Rule K Arbitral Tribunal's Award, which criticized CAS 2023/O/9370 for not having considered the possibility that these rules constitute a buyer's cartel).

[94] Ibid., paragraph 62.

To verify whether they can have anticompetitive effects, the referring Court would have to carry out a counterfactual analysis: would competition in the market in question (i.e., between agents and/or football clubs) be more intense in the absence of the rules at issue? In the affirmative, the referring Court would have to verify whether they might still be justified on the basis of the *Meca-Medina* case law, starting from whether an objective in the public interest worth of protection is identifiable. Here the AG raised a methodological criticism towards FIFA, which invoked a "*a myriad of interests as being allegedly protected by the FFAR*".[95] What matters, the AG underlined, is the actual contribution that each rule makes to the protection of a specific interest. The interest must be public and non-economic (such as preserving athletes' health, as in *Meca-Medina*). Importantly for FIFA, the AG considered that, under certain circumstances, the protection of contractual stability can be recognised as such (however, the causal connection with the rules in question would have to be explained in detail).[96]

Should the *Meca-Medina* requirements not be fulfilled, FIFA would have to demonstrate that the rules at issue pass the stricter test of Article 101(3) TFEU. In the context of the latter, the AG considered that also benefits of non-economic nature can be relevant, provided that they have tangible effects on the relevant markets.[97]

License requirements, for their part, limit market entry. However, there can be a genuine and objective reason for limiting market entry via a license requirement. If the association itself offers the same products for which it requires a license (hence, acting as a gatekeeper), more caution in the assessment is required. Here too, however, the referring Court might proceed to verify whether the *Meca-Medina* requirements are satisfied or, in the negative, the cumulative requirements of Article 101(3) TFEU.[98]

In the AG's view, the rules on multiple representation appeared to be *prima facie* not restrictive of competition, as aimed at avoiding conflicts of interest, and thus potentially justifiable under the *Meca-Medina* case law (provided that no alternative, equally effective and less restrictive, measures do not exist).[99] On the contrary, rules preventing agents from 'making an approach' appeared to be inherently anticompetitive.[100]

Regarding Article 102 TFEU, the AG had not doubts that FIFA was leveraging the power it has in the market – in which it operates in a dominant position – in order to influence competition in neighbouring markets (the connected markets of agents services, where agents compete, and that of players' transfers,

[95] Ibid., paragraph 69.
[96] Ibid., paragraph 71, recalling the Diarra judgment at paragraphs 100-102.
[97] Ibid., paragraphs 84-93.
[98] The AG recalled that in Piau, the General Court took the view that competition in the relevant market was not eliminated by the licensing system.
[99] Opinion of AG Emiliou, *FT and RRC Sports GmbH v Fédération internationale de football association (FIFA)*, C-209/23, paragraphs 107-108.
[100] Ibid., paragraphs 109-111.

in which clubs compete).[101] As far as the claimed exploitative abuses were concerned, the AG recalled that their exceptional nature requires setting the bar relatively high. Concerning the claimed exclusionary abuses, the AG referred to *Superleague*, which in turn referred to the concepts of (i) 'competition on the merits' and (ii) the 'capability' of the practice of producing exclusionary effects.

In this context, the AG recalled that the power of SGBs to adopt rules in the markets in which they operate can hardly be regarded as expression of competition on the merits but is simply results from their monopolistic role of regulators of the sport concerned.[102] The AG did not consider particularly relevant the difference existing with *Superleague* (here FIFA is not active on the market which is regulating at the same time), as FIFA might still have an indirect interest in regulating competition in neighbouring markets. According to the AG, the same strict checks are warranted regardless of whether the undertaking concerned is itself active in the market under scrutiny.[103]

6. *The findings of the ECJ*

In July 2026, the ECJ rendered its judgments on the agents' cases,[104] overall embracing the AG's line of reasoning.

6.1 *The Rogon judgment*

In this relatively short ruling the Court – after having preliminarily clarified that DFB is an association of undertakings and that the rules in question had not been formally adopted in the exercise of prerogatives typical of a public authority or on the basis of public delegation (hinting perhaps at a possible different treatment if that were the case) – the Court reiterated that the *Meca-Medina* test only applies in situations in which the conduct in question is not found to restrict competition by object.[105]

Crucially, the Court found that sports associations can regulate activities that are peripheral to their core mission such as those of football agents. This is because:

(i) the supply of services provided by agents has an impact on the clubs with the result that the cost of that supply is likely to influence the profitability of these clubs and

(ii) these clubs find themselves in a reciprocal competitive position on various markets and their performance is closely linked to the composition of teams over which agents exercise influence.[106]

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[101] Ibid., paragraph 117.
[102] Ibid., paragraph 133.
[103] Ibid., paragraph 137.
[104] In April 2026, the Court rendered its judgment in the Tondela case, which is interesting from the point of view of a by-object characterization.
[105] Judgment of 9 July 2026, *ROGON GmbH & Co. KG and Others v Deutscher Fußballbund eV (DFB)*, C-428/23, ECLI:EU:C:2026:563, paragraphs 36-37.
[106] Ibid., paragraph 44.

The Court clarified that, in order to achieve one or more legitimate objectives in the public interest, sports associations may be required to adopt regulations which are capable of having effects in the entire ecosystem which they regulate. In this context, the Court adhered to the AG's view that in such ecosystem a number of economic operators (players, clubs, coaches, agents, associations etc) need to interact for the system to appeal to the end consumers.[107] In these circumstances, regulating agents' services cannot be regarded as unrelated to the objective of guaranteeing the integrity of sporting competitions.[108]

Consequently, the *Meca-Medina* test is capable of being applied to regulations adopted by associations which also govern the use of third party undertakings not belonging to that associations (i.e., agents).

Concerning the assessment of the provisions in question, the Court determined that the test should be carried out with respect to each set of provision which pursue the same objective. In this sense, the Court also adhered with the AG's view that in some circumstances it would be artificial to split up a set of provisions, either because some are ancillary to others or because they cannot be dissociated.[109]

Rogon's significance lies less in its result, broadly anticipated by both sides of the FFAR litigation, than in the question of principle it resolves for the first time: whether the *Wouters/Meca-Medina* test can apply at all when the persons bearing a federation's restrictive rules are not members of the federation that adopted them. The Court's answer builds on the same structural link already used to justify FIFA's own reach over agents: the cost of agents' services is an input affecting the clubs' profitability, and the clubs' competitive position depends on the composition of teams over which agents exercise influence. On that basis, the Court held that regulations addressed to a federation's own members may still benefit from the exception where they also govern services supplied by third-party undertakings outside the federation, provided the ordinary conditions – a legitimate objective, inherence and proportionality – are independently satisfied with regard to those third parties too.[110] The analogy the Court draws with its own case law on the professions is worth noting: minimum-fee rules adopted by a professional association for its own members had already been held capable of the same exception even though they affected the association's clients, themselves third parties to it.[111]

Read together with *Superleague*, *Diarra* and *CD Tondela*, *Rogon* fits within a single line of authority under which a federation's regulatory autonomy is conditional on three cumulative requirements: a legitimate, sport-related objective; criteria that are objective and consistently applied; and a proportionality test reaching

[107] Ibid., paragraph 59.
[108] Ibid., paragraph 60.
[109] Ibid., paragraph 68.
[110] Ibid., paragraphs 56-62 and 64.
[111] Ibid., paragraph 61, citing judgments of 18 July 2013, *Consiglio Nazionale dei Geologi*, C 136/12, EU:C:2013:489, paragraphs 53 and 54, and of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C 427/16 and C 428/16, EU:C:2017:890, paragraphs 53 to 55.

the individual case – a structure recently described in the literature as a form of accountable autonomy.[112]

Rogon's own contribution is to detach that structure from federation membership: what triggers the inquiry is no longer whether the persons affected belong to the regulating association, but whether the regulation is capable, in the abstract, of producing restrictive effects on competition. The Court does not say how the inherence and proportionality limbs of the test should be calibrated once the affected undertakings sit entirely outside the federation's own structure, a point *RRC Sport* takes up directly.

6.2 The RRC Sports judgment

As far as competition law issues are concerned, the Court's reasoning in *RRC Sport* can be regrouped in four categories: (i) FIFA's legitimacy to regulate the activity of agents in the first place; (ii) the (strict) prerequisites to find an infringement by object (iii) an analysis of the provisions of the FFAR under scrutiny to assist the referring court and (iv) an overview of the potential justifications.

To begin with, the Court clarified (in unequivocal terms after the doubts left following *Piau*) a first important preliminary point: FIFA can regulate agents' activity. Indeed, the Court found a decisive correlation between the fact that the activity of football agents has an impact on competition between clubs[113] and that the principle of sporting merit (underpinning the system of football in Europe) requires equality of opportunity.[114] Hence, FIFA – which has an *a priori* legitimate role of global football regulator – [115] can also regulate peripheral activities for as long as they have an impact on the competitions, which appears to be the case for agents.[116]

The Court then recalled that the effects are examined only if a restriction by object is not established (thus reaffirming the need not to conflate the two)[117] and that a strict interpretation of the concept of restriction by object is warranted.[118] The Court confirmed the triple-test to assess a restriction by object (i.e., content, economic and legal context, objectives)[119] and that what matters is whether the

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[112] S. Bastianon - M. Colucci, *From Walrave to the Judgment of the General Court in Meca-Medina*, Chapter 6, in S. Bastianon and M. Colucci (eds.), Twenty Years after Meca-Medina: The Enduring Legacy of the CJEU's Sports Law Revolution (2026, forthcoming), For an early critical assessment of the FFAR under EU competition law prior to the Court's judgments, see R. Podszun and A. Kirk, *FIFA's football agent regulations and European competition law*, Journal of Antitrust Enforcement, Vol. 13, Issue 2, 2025, 458–483; on AG Emiliou's Opinions specifically, see G. Monti, *Justifications for Anticompetitive Agreements: AG Emiliou's Sports Trilogy of 15 May 2025*, Kluwer Competition Law Blog, 3 June 2025.
[113] *FT, RRC Sport GmbH v. FIFA*, C-209/23, paragraph 73.
[114] Ibid., paragraph 79.
[115] Ibid., paragraph 80.
[116] Ibid., paragraph 81.
[117] Ibid., paragraph 97.
[118] Ibid., paragraph 100.
[119] Ibid., paragraph 102.

practice in question has an intrinsic anticompetitive objective[120] not what the subjective intentions were.[121]

Clarified these general points, the Court moved on to analyse the different set of provisions of the FFAR under the light of Article 101 TFEU to provide the referring court with the necessary guidance:

a. *Multiple representation*: the Court explained that rules aimed at reducing the possibility to represent clients can be generally considered as having the capacity of reducing competition. However, the Court specified at the same time that this characteristic is not *per se* enough to conclude that the rules determine a sufficient degree of harm to be characterised as an infringement by object.[122] To the contrary, considering that the objective of the rules protecting competition is not to ensure freedom of commercial activity,[123] these rules do not seem to constitute an infringement by object.

b. *The service fee*: The Court recalled that, generally speaking, horizontal price fixing is intrinsically obstructive of competition.[124] However, and upholding the AG's observations, the same conclusion cannot necessarily be reached regarding the practice of fixing a ceiling, i.e. a maximum price.[125] To the contrary, it seemed to the Court that Article 15, paragraph 2[126] does not have an impact on the offer of services, or their quality as such as to dispense the court from an analysis of the effects (i.e., as such as to be considered an infringement by object). Actually, the Court found that a rule that provides for a relative limit, if proportional, as the case may be, either to the remuneration that the player or coach will receive when the agent represents that individual or the receiving club, or to the compensation paid by the receiving club to the transferring club when the agent represents the latter, is not likely to prevent agents from recouping the efforts they make, in particular to improve the quality of the services they provide, by obtaining higher remuneration, nor that it is such as to deter them from offering their services on the relevant market.[127] For their part, neither Article 14, paragraphs 2[128] and 3[129] appear to restrict competition by object. Moreover, the Court noted that

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[120] Ibid., paragraph 108.
[121] Ibid., paragraph 109.
[122] Ibid., paragraph 116.
[123] Ibid., paragraph 117, recalling *Servizio Elettrico Nazionale*.
[124] Ibid., paragraph 120.
[125] Ibid., paragraph 121.
[126] This is the provision that introduces the cap.
[127] *FT, RRC Sport GmbH v. FIFA*, C-209/23, paragraph 122.
[128] Article 14, paragraph 2, FFAR: "Payment of the service fee due under a Representation Agreement shall be made exclusively by the Client of the Football Agent. A Client may not contract with or authorise any third party to make such payment".
[129] Article 14, paragraph 3, FFAR: "The only exception to the principle in paragraph 2 of this article is when a Football Agent is representing an Individual and their negotiated annual Remuneration is less than USD 200,000 (or equivalent), not counting any conditional payments. In such cases, an Engaging Entity may agree with an Individual to pay the service fee for that Transaction to their Football Agent in accordance with the Representation Agreement. All of the following conditions

the rules providing limits for the modality or calculation of payment to agents do not seem to constitute an obstacle to competition on the price and, being indistinctively applied to all agents, do not appear to advantage some over others. The Court then noted how some of these rules (notably Article 14, paragraph 7[130] and 10[131]) might even have pro-competitive nature.[132] Concerning Article 14, paragraph 12,[133] however, the Court noted that – in so far as it provides, in respect of the situation to which it refers, that the sole condition for its application is that the individual must have been transferred to another receiving club before the expiry of the negotiated employment contract – then such a rule would mean that agents who were involved in the individual's initial transfer but who have since ceased to represent him would automatically be deprived of part of their remuneration if the individual were to be transferred to another club. Such a deprivation of remuneration would have to be regarded as a restriction by object.[134]

c. *The licence*: the question did not concern the necessity of a licence, but the modalities of obtaining it and keeping it. The Court noted that the mere fact of requiring any economic operator wishing to participate in transfers falling within the FIFA ecosystem to comply with its rules and jurisdiction (or even a specific arbitration body), cannot, in itself, be regarded as such as constituting a restriction of competition by 'object'.[135] As to the rules requiring that the candidate must never have been convicted, following criminal proceedings, of any of the offences listed in the FFAR nor must they have been subject to a suspension of at least two years or to exclusion, the Court noted that said requirement does not appear to be such as to prevent a significant number of people from entering the market for agent services. As such, they do not seem to be restrictive by object.[136]

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must apply: a) The service fee payment made by the Engaging Entity on behalf of the Individual shall not affect the fiduciary duty of the Football Agent to the Individual. It must also not create any dependency or subordination of the Football Agent towards the Engaging Entity. b) The service fee payment made by the Engaging Entity on behalf of the Individual must be no higher than the agreed service fee in the Representation Agreement between the Individual and Football Agent. c) The Engaging Entity may not deduct any service fee payment made pursuant to paragraph 3 of this article from the Individual's Remuneration".

[130] Article 14, paragraph 7, FFAR: "Only the Remuneration actually received by an Individual shall be subject to the payment of a service fee, calculated on a pro-rata basis".

[131] Article 14, paragraph 10, FFAR: "Where a Football Agent acts on behalf of an Engaging Entity and an Individual in the same Transaction under article 12 paragraph 8 a) of these Regulations (permitted dual representation), the Engaging Entity may pay up to 50% of the total service fee due".

[132] In the original in French *« des conséquences pro-concurrentielles »* (paragraph 130) and *« de nature à favoriser la concurrence »* (paragraph 131).

[133] Article 14, paragraph 12, FFAR: "A Football Agent is not entitled to receive any service fee not yet due deriving from a negotiated employment contract where: a) the Individual transfers to another Engaging Entity before the negotiated employment contract expires; or b) the negotiated employment contract is prematurely terminated by the Individual without just cause and the Football Agent still represents the Individual at the time of that termination".

[134] *FT, RRC Sport GmbH v. FIFA*, C-209/23, paragraphs 136-137.

[135] Unless those very same rules themselves can be regarded as restrictive by object.

[136] *FT, RRC Sport GmbH v. FIFA*, C-209/23, paragraphs 139-151.

d. The rules concerning 'making an approach': As to Article 16, paragraph 1, lit. b)[137] and c),[138] the Court noted that, provided that the duration of an exclusive agency contract is not manifestly excessive, these rules cannot, on their own, be regarded as restrictive by object. The Court observed that, whilst any contract of a certain duration is likely to hinder the optimal adjustment of supply and demand, this circumstance must be weighed against the need for predictability faced by any economic operator in organising its business.[139] However, the Court also noted that the provisions in question apply only to agents with whom the player (or coach or club) concerned is not already bound by a representation contract, whereas agents already bound by an exclusive representation contract are not required to wait for the two-month period preceding the end of that contract in order to renegotiate its terms or conclude a new one. Therefore, according to the Court, such rules confer an advantage on the latter group over the former. An advantage which is likely to distort the interplay of supply and demand in the relevant market. Consequently, it appeared justified to the Court to classify these rules – in so far as they exclude from their scope agents already bound by an exclusive agency contract – amongst those forms of coordination constituting an infringement by object.

e. The rules concerning disclosure requirements: The Court did not consider these rules as inherently anticompetitive (noting that whilst it is true that, in a highly concentrated market, the exchange of information on prices charged is likely to encourage collusive behaviour, in a market characterised by a wide range of market participants, the disclosure and publication of such information may – on the contrary – help stimulate competition).[140]

Of all the provisions under scrutiny, therefore, the Court found that only two could be regarded as constituting an infringement by object (leaving, in any case, to the referring court to verify in concrete).

Moving on to the effects, which are analysed only if a practice is not considered to be restrictive by object, the Court agreed with the AG that the assessment requires a counterfactual analysis (i.e., whether competition in the market in question would be more intense in the absence of the rules at issue), which is beyond its task in a referral procedure.

The Court then confirmed that the *Meca-Medina* test would apply only if the practices in question were found not to be restrictive by object.[141] This means that this test would apply to all the provisions of the FFAR under scrutiny, save for two.

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[137] Article 16, paragraph 1, lit. b), FFAR: "A Football Agent may […] not approach a Client that is bound by an exclusive Representation Agreement with another Football Agent, except in the final two months of that exclusive Representation Agreement".

[138] Article 16, paragraph 1, lit. c), FFAR: "not enter into a Representation Agreement with a Client that is bound by an exclusive Representation Agreement with another Football Agent, except in the final two months of that exclusive Representation Agreement".

[139] *FT, RRC Sport GmbH v. FIFA*, C-209/23, paragraphs 154-155.

[140] Ibid., paragraphs 159-169.

[141] Ibid., paragraphs 176-177.

The Court underlined that, in order for an association of undertakings to successfully invoke the pursue of a legitimate objective in the public interest, these objectives must first of all not be of purely economic nature.[142] However, and importantly, the Court underlined that the fact that a regulation is dictated by one or more economic considerations does not preclude it from being justified if it appears that, through those considerations, it ultimately pursues one or more legitimate objectives of general interest of a non-economic nature.[143] The Court noted that the objectives indicated by FIFA (the establishment of minimum professional and ethical standards; the protection of clients from agents' conducts that contravene the ethical requirements applicable to this activity; the protection of players who lack experience or information regarding the workings of the football transfer system; the strengthening of contractual stability) appear to be legitimate objectives of public interest.

Whether the rules at issue are necessary and capable of obtaining these objectives (or whether FIFA could obtain them with less restrictive measures) would be for the referring court to assess.

The Court, however, provided some guiding observations on the matter.

Some of the rules on payments of agents (notably Article 15, paragraph 1, Article 15, paragraph 2 and Article 14, paragraph 7, FFAR) appeared to the Court to be capable of achieving the legitimate objective of protecting clients from conducts by agents that are contrary to the ethical requirements applicable to that activity. Indeed, such rules are capable of preventing situations in which agents might be tempted to act in an interest distinct from that of their clients and, consequently, of reducing the risk that they might find themselves in a situation of conflict of interest.

The rules concerning the licence requirements too seem to be aimed at obtaining a legitimate objective of public interest.

Conversely, with regard to the information set out in Article 19, lit. e),[144] the Court noted that the particularly broad wording of that provision, referring to 'details of all transactions involving agents', appears to leave open the possibility that such information may not be necessary for the purposes of achieving the legitimate objective.

Moving on to the analysis under Article 102 TFEU, the Court, expressly referring to the AG conclusions, noted that – although unlike in *MOTOE* and *Superleague* – FIFA does not actively operate on the markets affected by the FFAR, it still has the power to determine which undertakings may enter this market and holds therefore a dominant position therein.[145]

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[142] Ibid., paragraph 183.
[143] Ibid., paragraph 184.
[144] Article 19, lit. e), FFAR: "FIFA shall make available […] details of all Transactions involving Football Agents, including the service fee amounts paid to Football Agents".
[145] *FT, RRC Sport GmbH v. FIFA*, C-209/23, paragraphs 242-244.

The Court recalled that what is prohibited is not the holding of a dominant position but the abuse of that position[146] and that this can be obtained via both exclusion and exploitation practices.[147]

Concerning the former, for the conduct of a dominant undertaking to fall within the scope of this analytical framework, that undertaking must be in actual or potential competition with the undertakings affected by the conduct in question. Although it does not seem that FIFA is present on that market, it is for the referring court to assess whether the circumstances of the case lead to consider that FIFA put in place an exclusionary abuse (even if the effects of that conduct manifest themselves in an adjacent market).[148]

Concerning the latter, for the conduct of a dominant undertaking to fall within the scope of this analytical framework, an undertaking in a dominant position has derived, or is seeking to derive, an unfair advantage from that position in a given market, to the detriment of its customers, suppliers or other trading partners.[149] It is for the referring court to assess whether, in the case at hand, FIFA has, in its own interest, imposed on its customers, suppliers or other trading partners conditions for the conduct of their business which lack any objective economic, technical or legal justification (this could be established by demonstrating that a reasonably effective sports federation, placed in a comparable situation, would have been led to adopt rules different from those at issue, which, whilst being capable of achieving the objectives pursued, would have been significantly less detrimental to the agents' own interests).

Even if it were demonstrated that FIFA abused its dominant position, FIFA would have the possibility to justify its conduct. In this sense, FIFA could either argue that its conduct falls within the scope of the *Meca-Medina* jurisprudence or that its conduct is objectively necessary due to specific and legitimate constraints (of legal, industrial or commercial nature) or demonstrate that the negative effects on consumers are offset, or outweighed, by efficiency gains for consumers (in this case, the conditions are the same as set forth for the application of Article 101(3) TFEU).[150]

The Article 102 TFEU analysis deserves a further remark.

FIFA's dominant position was established not by reference to its presence on the affected markets – from which the Court expressly distinguished this case from *MOTOE* and *Superleague* – but by reference to its regulatory, supervisory and sanctioning powers over the undertakings operating on those markets.[151] The distinction matters: it locates the source of dominance in FIFA's function as rule-maker rather than in any competitive activity of its own. On the Court's own reasoning, an association that itself does no more than authorise, license and sanction market participants can

[146] Ibid., paragraph 251.
[147] Ibid., paragraph 253.
[148] Ibid., paragraphs 262-267.
[149] Ibid., paragraph 268.
[150] Ibid., paragraphs 275-283.
[151] Ibid., paragraphs 240 and 242-244.

still hold, and abuse, a dominant position on a market it regulates but does not compete in. The point is not confined to the FFAR: it applies whenever a federation exercises binding rule-making power over a significant part of a market, and it supplies the analytical link connecting the exclusionary-abuse and exploitative-abuse findings the Court went on to make.[152] Whether the referring court will in fact find such an abuse remains open; what the judgment settles is that dominance through regulation is, on its own, sufficient to bring FIFA's conduct within the reach of Article 102 TFEU, without any separate showing of market presence.

7. Conclusions

Although the agents' saga is not formally over (being for the referring court to decide whether, on the basis of the indications received, the rules in question constitute an infringement by object or by effect and whether they are justified), some conclusions can already be drawn from a sports regulatory perspective.

The first is that FIFA can regulate any activity which has an impact on its core mission (i.e., to maintain the integrity of competitions by, *inter alia*, adopting rules seeking to obtain equality of opportunities to guarantee sporting merit). As peripheral to it as it can be, the activity of football agents has an undeniable impact on the competitions which FIFA is tasked to regulate. Hence, FIFA can regulate their activity too.

The second is that, even though the scrutiny of FIFA's regulatory work has gained *momentum*, not every rule that it adopts – and which has the potential to have an impact on competition – is doomed to be quashed as a restriction by object. This is because (i) by-object infringements should be restrictively interpreted, (ii) context always matters in the assessment (and the context in which FIFA and all the football actors operate is a rather peculiar one) and (iii) some apparently anti-competitive practices might, at a closer look, reveal traits that were overlooked at first sight. One example warranting caution proved to be the service fee cap, which was, as per the *vox populi,* the rule most likely to be bashed in the judgement. The Court found instead, as did the AG before, that fixing a price ceiling is not the same as fixing a price floor, and the former might, in fact, not have any concrete impact on the quantity and quality of services offered to consumers.

The third lesson is that the above does not mean an indiscriminate green light. To the contrary, especially considering that conflict of interest is looming even when FIFA is regulating markets over which it does not have a direct economic interest, FIFA needs not only to demonstrate that it is intervening in the pursue of a legitimate objective, but that it is doing so with means adequate to obtain that objective and in a proportionate manner (which, depending on the specific rules and the circumstances of the case, might not always be an easy task). Indeed, FIFA must account for the fact that it is in a position of monopoly in the relevant

[152] Ibid., paragraphs 261-265 and 268-274.

market and that its conduct might be considered exclusionary or exploitative even if it is not in a position of actual or potential competition in such market. This demands an additional layer of attention when enacting regulation.

Save for two rules, the provisions of the FFAR under the spotlight will very likely escape the by-object guillotine (it is difficult to fathom the Mainz Court departing from the ECJ's indications). This seems to be a rather encouraging signal for FIFA: it is not only entitled to regulate agents' activity, but most of the rules it put in place to that end (including the rule arguably igniting the legal battleground) do not seem to be inherently anticompetitive. The Court went as far as noting that some of them might even have a pro-competitive nature.

After *Superleague* and *Diarra*, what do the agents' cases add to the picture?

Just as the case law of the Court on by-object restrictions is becoming more and more coherent (and predictable) over time,[153] so is the stance of the ECJ with respect to sports rules with an economic dimension adopted by FIFA (or any other SGB). To paraphrase an old classic, every step that FIFA takes, the Court will be watching. This does not mean, however, that it will come crushing. A by-object characterisation demands, in fact, a rather strict interpretation. Ultimately, the lesson is the same as in *Superleague* and *Diarra*: FIFA has (rightfully) margin and legitimacy to operate as the global football regulator. Provided that it is not adopting inherently anticompetitive rules, it must (equally rightfully) always be able to justify the reason (a legitimate objective in the public interest) and the (adequate and proportional) way in which it does so, relying on – but not hiding behind – the peculiarities of the context in which it operates.

Framed in this way, *Rogon* and *RRC Sport* read less as a departure from *Superleague* and *Diarra* than as their extension. Across all four judgments the Court tests a federation's regulatory power against the same three requirements: a legitimate, sport-related objective that the Court verifies independently of the federation's own characterisation of it; criteria that are objective, transparent and consistently applied; and a proportionality assessment that does not stop at the design of the scheme but reaches the individual case.[154] What *Rogon* and *RRC Sport* add is the reach of that structure: it now extends to persons who never joined the federation, took no part in making the rules that bind them, and have no institutional channel other than litigation to contest them. That extension is not unconditional. Neither judgment explains how the inherence and proportionality tests should be recalibrated once the persons affected sit outside a federation's own regulatory structure altogether, and it will fall to the Landgericht Mainz, and

[153] *See* P. Ibáñez Colomo, *Restrictions by object under Article 101(1) TFEU: from dark art to administrable framework* (2024) 43 Yearbook of European Law 224, Available at SSRN: *https://ssrn.com/abstract=5020889 or http://dx.doi.org/10.2139/ssrn.5020889*.

[154] S. Bastianon and M. Colucci, *From Walrave to the Judgment of the General Court in Meca-Medina*, Chapter 6, cited above.

to the national courts that follow, to work out what a federation must show when the market it regulates is one it does not itself compete in.[155]

[155] For an early practitioner assessment of the two July 2026 judgments, see J. Wauters, A. Komninos and N. Hertel, *Three football cases before the CJEU – Is the tide turning slightly in favour of sports governing bodies?*, White & Case LLP Insight Alert, 30 July 2026.

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