

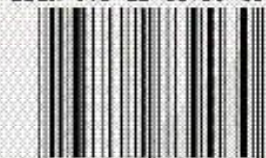
STEFANO BASTIANON

MICHELE COLUCCI

THE EUROPEAN UNION AND SPORT HANDBOOK

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The information and views set out in this handbook are those of the author and do not reflect the official position of the European Commission.

List of Abbreviations

CAS	Court of Arbitration for Sport
CONI	<i>Comitato Olimpico Nazionale Italiano</i> (Italian National Olympic Committee)
DLV	<i>Deutscher Leichtathletikverband eV-</i> (German Athletics Association)
DHB	<i>Deutscher Handballbund</i> (German Handball Association)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Communities
ELPA	<i>Elliniki Leschi Periigiseon kai Aftokinitou</i> (Automobile and Touring Club of Greece)
ESLC	European Super League Company
EU	European Union
EWOS	European Week of Sport
FAPL	Football Association Premier League
FFAR	FIFA Football Agent Regulations

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FFP	UEFA Financial Fair Play Regulations
FIA	<i>Fédération Internationale de l'Automobile</i> (International Automobile Federation)
FIBA	<i>Fédération Internationale de Basketball</i> (International Basketball Federation)
FIFA	<i>Fédération Internationale de Football Association</i> (International Federation of Association Football)
FIFA-DRC	FIFA Dispute Resolution Chamber
FIGC	<i>Federazione Italiana Giuoco Calcio</i> (Italian Football Federation)
FOA	Formula One Administration Limited
GDPR	General Data Protection Regulation
IAAF	International Association of Athletics Federations
IOC	International Olympic Committee
ISU	International Skating Union
ITC	International Transfer Certificate
MOTOE	<i>Motosykletistiki Omospondia Ellados NPID</i>
NADA	<i>Nationale Anti-Doping Agentur Austria GmbH</i> (Austrian National Anti-Doping Agency)
RFEF	<i>Real Federación Española de Fútbol</i> (Royal Spanish Football Association)
RSTP	Regulations on the Status and Transfer of Players
TEC	Treaty establishing the European Community
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on the European Union

TFEU	Treaty on the Functioning of the European Union
UCI	<i>Union Cycliste Internationale</i> (International Cycling Union)
UEFA	<i>Union des Associations Européennes de Football</i> (Union of European Football Associations)
UNECTEF	<i>Union Nationale des Entraîneurs et Cadres Techniques Professionnels du Football</i> (French National Football Coaches Association)
URSBFA	<i>Union Royale Belge des Sociétés de Football Association ASBL</i> (Royal Belgian Football Association)
USK	<i>Unabhängige Schiedskommission</i> (Austrian Independent Arbitration Committee)
WADA	World Anti-Doping Agency

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Introduction

This handbook is the result of thirty years of academic engagement across several universities worldwide, combined with the authors' professional experience in the sports field.

It reflects a unique and practice-oriented perspective on the evolving and often contested interaction between European Union law and sport.

At its core, the handbook provides a structured analysis of the landmark jurisprudence of the Court of Justice of the European Union (CJEU) concerning the economic dimension of sport, along with the relevant decisions of the European Commission and other institutional acts addressing the multifaceted nature of sport regulation in the EU legal order. The interpretative methodology adopted by the authors is designed to be both rigorous and accessible, offering a navigable framework for understanding the complexities of EU sports law.

The publication pays particular attention to the often fraught and delicate relationship between the European Union and sport, an area historically marked by legal uncertainty, institutional tension, and evolving policy priorities. It seeks to clarify this relationship by contextualising key legal developments and enabling the reader, in primis law students, to engage with both the letter and the spirit of EU legal sources.

To this end, the handbook is structured in five main sections, drafted in a clear and essential style to facilitate immediate comprehension of the legal and policy issues at stake:

The first section addresses the freedom of movement of workers and the prohibition of discrimination within the European Union, beginning with early jurisprudence, including *Walrave Koch*, and continuing through the landmark *Bosman* judgment and subsequent case law, including the latest one, *FC Antwerp v. UEFA* decision.

The second section focuses on the economic dimension of sport, assessed through the lens of EU competition law, from *Meca Medina* to the more recent and high-profile *Superleague* and *ISU* cases.

The third section examines Commission decisions and relevant Court judgements in the area of State aids, particularly as they pertain to the public financing of sport infrastructures and events.

The fourth section explores the emerging area of sport and EU fundamental rights, especially in relation to effective judicial remedies, protection of personal and sensitive data.

of personal and sensitive data, all topics of growing importance in light of recent judicial developments.

The fifth and final section provides an overview of the EU programmes and actions in the field of sport, mapping the policy initiatives and funding instruments through which the Union supports sporting.

The previous edition examined two major developments in the Court's case law: the *Diarra* judgment on the relationship between free movement and contractual stability in professional football, and the *Seraing* case, concerning effective judicial protection in relation to arbitral awards in sport.

This edition builds on those developments and incorporates several judgments delivered by the Court of Justice in 2026, including *CD Tondela* in April and, most recently, *ROGON*, *RRC Sports*, *FIGC and CONI* and *NADA Austria* in July 2026. These judgments address different aspects of the relationship between EU law and sport.

In *ROGON*, the Court considered the application of the *Wouters/Meca-Medina* exception to federation rules which, although addressed to the federation's members, also regulate their use of services provided by players' agents operating outside the federation. In *CD Tondela*, it examined under Article 101 TFEU a no-poach agreement adopted by Portuguese football clubs during the COVID-19 pandemic. In *RRC Sports*, the Court assessed the compatibility with EU law of several FIFA rules governing the activities of football agents.

In *FIGC and CONI*, the Court clarified the application of the freedoms of movement to disciplinary sanctions imposed on club directors and the requirements of effective judicial protection.

In *NADA Austria*, it addressed the compatibility of the online publication of anti-doping sanctions with the GDPR. Each judgment is discussed, together with the facts that gave rise to it, in the relevant section of the handbook.

For readers wishing to deepen their understanding, a carefully selected bibliography is provided at the end of the book. It is intended to guide further research and critical reflection on this dynamic and increasingly important area of EU law.

Finally, the authors wish to sincerely thank Durante Rapacciuolo and Paolo Stancanelli for their valuable comments and suggestions, and Antonella Frattini for her precious help in editing the book.

Bergamo – Bruxelles, 15 September 2026

Stefano Bastianon

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I. FREEDOM OF MOVEMENT AND BAN ON DISCRIMINATION ON THE BASIS OF NATIONALITY

1. LEGAL FRAMEWORK

The European Union is an international organization composed of 27 Member States and an internal single market governed by EU law. The Treaty on the Functioning of the European Union (TFEU) and the relevant secondary legislation encapsulate, among others, the principles as well as the policies on free movement of people, goods, services and capital which define and objectify the internal market for European citizens and enterprises.

In fact, in light of the free movement rules, EU citizens are entitled to move freely from one Member State to another to search for a job, to work or to establish a business there, to move back to their home country without facing any border check or any sort of discrimination in comparison with the host country citizens or whatever obstacle, legal or material.

In detail, EU citizens in the host Member State cannot be discriminated on the basis of their nationality with regard to access to employment, remuneration, working conditions, and social benefits.

Thus, these fundamental principles of freedom and non-discrimination apply to athletes, independent of their sporting status – amateurs or professionals – or employment status, being employees as for instance football, basketball, handball players or self-employed like judokas or tennis players.

The Court of Justice has systematically said that EU law applies to sport not as such but whenever it constitutes an economic activity pursuant to Article 2 TEC¹ (now Article 3 TEU)² and, as a consequence, for years has applied

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¹ Article 2 TEC (original version): “It shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States”.

² Article 3 TEU: “1. The Union’s aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly

Article 45 TFEU (freedom of movement of workers)³ and Article 56 TFEU (freedom of establishment and freedom to provide services)⁴ to professional athletes whose sports activity also qualifies as an economic activity.

competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties”.

³ Article 45 TFEU (ex Article 39 TEC): “1. Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service”.

⁴ Article 56 TFEU (ex Article 49 TEC): “Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union”.

When the notion of European citizenship was inserted in Article 18 TFEU⁵ and Article 21 TFEU,⁶ even amateur players, i.e. those who do not have an employment contract and, therefore, do not perform an economic activity *stricto sensu* benefited of the freedom provided by the Treaty.

Over the years, sport business has gained growing importance and Article 6 TFEU⁷ reflects this evolution allocating to the European Union the competence to carry out actions to support, coordinate or supplement the actions of the Member States in the area of sport.

However, the analysis of Article 165 TFEU⁸ ought to be conducted carefully and precisely to detect its substantial scope for the EU sport policy.

⁵ Article 18 TFEU (ex Article 12 TEC): “Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination”.

⁶ Article 21 TFEU (ex Article 18 TEC): “1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament”.

⁷ Article 6 TFEU: “The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:

- (a) protection and improvement of human health;
- (b) industry;
- (c) culture;
- (d) tourism;
- (e) education, vocational training, youth and sport;
- (f) civil protection;
- (g) administrative cooperation”.

⁸ Article 165 TFEU (ex Article 149 TEC): “1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

This provision designs the nature of supporting actions the EU can take to develop the European sport dimension through incentive measures so as to sustain the Member States sport policies in promoting moral and social matters. It expressly states the stark limits of this European competence.

Indeed, the same provision affirms once more the specificity of sport as a human and social activity while keeping the national sport laws and regulations out of the EU legal harmonization reach. In other words, the EU cannot formulate its own constraining sports rules to which the Member States and their citizens should abide. The last indent of this article corroborates the limited scope of the EU sport responsibility, allocating to the EU Council of Ministers the power of adopting only recommendations, which have no abiding force on the Member States laws and its citizens.

The wording of Article 165 TFEU on specificity meets the sports stakeholders’ claim to keep safe their legal autonomy and the peculiarities of sport’s activities and institutions.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
- promoting cooperation between educational establishments,
- developing exchanges of information and experience on issues common to the education systems of the Member States,
- encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
- encouraging the development of distance education,
- developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article:

- the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- the Council, on a proposal from the Commission, shall adopt recommendations”.

II. FREEDOM OF COMPETITION

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1. LEGAL FRAMEWORK

Professional sport activities have two intertwined dimensions.

The traditional one is the purely agonistic, human and social challenge held out on pitches, athletic stadiums or public roads.

The other dimension is the economic one, which has hugely developed in the last five decades and has given birth to the so-called sport business, ranked as a prime financial activity worth hundreds of billions of Euros worldwide. The sport business is now fully assimilated into other economic activities and therefore subject to the legal screening of the relevant European and national competition authorities.

Since creating the common market and afterwards the single market, both the Commission and the Court of Justice have ruled that economic activities in the context of sport do fall fully within the scope of European Union law, including Articles 101⁹⁹ and 102¹⁰⁰ TFEU. Although sport fulfils very important

⁹⁹ Article 101 TFEU (ex Article 81 TEC):

“1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,
which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

educational, social and cultural functions, there is a wide-ranging field of activities that clearly have an economic nature: for example, the income, revenues and profits originating from the sport events organizations, sponsorships and media rights, advertising activities, and the transfer of athletes.

However, the Commission and the same Court of Justice have been wary and prudent in dealing with the sport free competition issues. The EU institutions have been aware that sport matters are socially and politically sensitive. Therefore, they have applied special juridical analyses of the sport industry problems, which are unique and as such should be dealt with.

For example: (i) sport events are a product of the contest between a number of clubs/teams or at least two athletes; accordingly, the interdependence between competing adversaries is a feature specific to sport; (ii) if sport events are to be of interest to the spectator, they must involve uncertainty as to the result; therefore, there must be a certain degree of equality in competitions; and (iii) the organisational level of sport in Europe is characterised by a monopolistic pyramid structure.¹⁰¹

Article 101 TFEU applies to “undertakings” and “associations of undertakings”, while Article 102 TFEU applies to “undertakings”.

The Court of Justice has defined the term “undertaking” broadly to include every entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.¹⁰²

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question”.

¹⁰⁰ Article 102 (ex Article 82 TEC):

“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts”.

¹⁰¹ Commission Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport (COM (2007) 391 final), paragraph 3.4.

¹⁰² ECJ, judgment of 23 April 1991, Case 41/90 *Klaus Höfner and Fritz Elser v Macroton GmbH*, ECR 1991 I-1979, paragraph 21.

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Moreover, an economic activity is defined as any activity consisting of offering goods or services on the market.¹⁰³ Accordingly, it is not surprising that individual athletes, sports clubs and sports associations are considered as undertakings and/or associations of undertakings.

An elite, professional athlete participating in an international competition is exercising an economic activity – even if he/she is not remunerated by the organiser – because such services are normally remunerated and the participation in the event generates economic activity (e.g., the sale of tickets, broadcasting and media rights, sponsoring agreements and other commercial services).

The fact that an individual athlete is employed by a sports club does not rule out that the athlete may be considered an undertaking insofar as he/she carries out economic activities independent thereof, e.g., by entering into sponsorship agreements.¹⁰⁴

Similarly, it is settled case law that sports clubs/teams are undertakings within the meaning of Article 101 TFEU and Article 102 TFEU to the extent they carry out economic activities by selling for instance tickets of the sport events, selling broadcasting rights or concluding sponsorship or advertising agreements.

National sports associations too may be undertakings both under Article 101 TFEU and Article 102 TFEU and associations of undertakings under Article 101 TFEU whenever they carry out economic activity, e.g., by commercially exploiting a sport event. Sports associations are associations of undertakings under Article 101 TFEU to the extent they constitute groupings of sports clubs/teams or athletes for which the practice of sport constitutes an economic activity.

Lastly, international sports associations (such as the IOC, UEFA or FIFA) are undertakings to the extent they carry out activities of economic nature such as the organization of international competitions and their commercial exploitation, the conclusion of advertising contracts and contracts relating to broadcasting rights.

That said, national and/or international sports associations are the bodies that adopt sporting rules, which sport clubs/teams and athletes need to apply and observe. Sporting rules adopted by national or international sports associations may constitute agreements or decisions by undertakings or associations of undertakings within the meaning of Article 101(1) TFEU. Such sporting rules, like any other decisions or agreements, are prohibited if they have as their object

¹⁰³ ECJ, judgment of 16 June 1987, Case 118/85 *Commission v Italy*, ECR 1987, 2599, paragraph 7.

¹⁰⁴ European Commission, *Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport*, paragraph 2.1.3.

or effect the restriction or distortion of competition within the common market and affect trade between Member States.¹⁰⁵

By contrast, Article 102 TFEU prohibits any abuse by one or more undertakings in a dominant position within the common market or in a substantial part of it in so far as it may affect trade between Member States.

Traditionally, national and international sports associations usually have monopolies in a given sport and may thus normally be considered dominant in the market of the organisation of those sports events under Article 102 TFEU.¹⁰⁶

The Court of Justice has validated the existence of the exception or derogation from applying the above-mentioned rules for some economic sporting activities. The EU judges have found that the competition rules are not infringed by the sporting rule restrictions, whenever the latter pursue a legitimate objective, the restrictive effects are inherent in the pursuit of that objective and are proportionate to it.

Legitimate objectives of sporting rules will normally relate to the organisation and proper conduct of competitive sport and may include, e.g. ensuring fair sporting competitions with equal chances for all athletes, uncertainty of results, protection of the athletes' health, protection of the safety of spectators, the encouragement of training of young athletes, financial stability of sport clubs/teams or ensuring a uniform and consistent exercise of a given sport (the "rules of the game").¹⁰⁷

Article 101(3) TFEU applies also to sport. According to this provision, where a restriction under Article 101(1) TFEU is found, the prohibition therein contained may be declared inapplicable in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives and do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products concerned.

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Conclusions

The number and the importance of cases in the field of sport recently submitted to – and the ones currently pending before – the Court of Justice testify the impact that EU law can have on the international sports stakeholders and their regulatory framework.

In several political acts (*Amsterdam* and *Nice Declarations*), the EU Member States and the EU institutions themselves (*EU Parliament Resolutions on Sport*) have recognized the autonomy of sports associations to "rule the game" while the Court since its first jurisprudence (*Walrave and Koch* case) has always declared that sport as an economic activity falls under the scope of the EU Treaty.

According to this undisputed principle, the EU judges have decided that a transfer fee at the end of an employment contract was an obstacle to the freedom of movement of workers and quotas of players on the basis of their nationality were discriminatory (*Bosman* case). Moreover, training compensations in football were justified only if they reflect the real and effective costs for training players (*Bernard* case).

At the same time, transfer windows were considered legitimate to protect the integrity of competitions (*Lehtonen* case), and selection rules limiting the number of athletes in a tournament were deemed to be inherent in the conduct of an international high-level sports event (*Deliège* case).

Of course, over the years, the jurisprudence has evolved to the point that in a remarkable decision (*Meca Medina* case), the Court of Justice made it clear that there is no blanket exception for sport and it rejected as irrelevant the notion of "purely sporting rules" – such as the doping ones – for the purposes of applying EU competition law.

In assessing the compatibility of a sporting rule with the EU competition rules, the judges decided that account must be taken of (a) the overall context in which the rule was adopted or the decision was taken or produces its effects, and more specifically, of its objectives; (b) whether the restrictive effects are inherent in the pursuit of the objectives; and (c) are proportionate to them.

This legal background is critical to define and bear in mind whenever the specificity of sport is invoked.

¹⁰⁵ European Commission, *Staff Working Document - The EU and Sport: Background and Context - Accompanying document to the White Paper on Sport* (COM (2007) 391 final), paragraph 2.1.4.

¹⁰⁶ *Ibid.*, paragraph 2.1.4.

¹⁰⁷ *Ibid.*, paragraph 2.1.5.

Aside of those developments, some policy documents (*White Paper on Sport* and subsequent *Commission Communication on Developing the European Dimension in Sport*) have defined and paved the way for a comprehensive EU political approach to sport. In this direction, several actions and programmes (*Erasmus+ sports programme*) have been adopted in line with Article 165 TFEU in order to foster the European dimension through sport.

The *Superleague* jurisprudence has been particularly important and has caused a stir in the football world. In fact, the Court of Justice has ruled that the FIFA and UEFA rules making any new interclub football project, such as the *Super League*, subject to their prior approval, and prohibiting clubs and players from playing in those competitions, are unlawful, given that there is no framework under the FIFA and UEFA rules ensuring that they are transparent, objective, non-discriminatory and proportionate.

Even before the Court's ruling, in June 2022, UEFA modified its rules on the prior authorization system, enacting a complex procedural system. It remains to be seen whether these new rules satisfy the requirements of clarity, objectivity, non-discrimination and proportionality as required by the Court of Justice.

Similarly, the rules giving FIFA and UEFA exclusive control over the commercial exploitation of the rights related to those competitions are such as to restrict competition, given their importance for the media, consumers and television viewers in the European Union.

The above rulings also clarified the role and scope of Article 165 TFEU. In particular, the Court of Justice held that Article 165 TFEU is not a cross-cutting provision having general application. Accordingly, although the competent EU institutions must factor the different elements and objectives listed in Article 165 TFEU when they adopt incentive measures or recommendations in the area of sport, those different elements and objectives, as well as those incentive measures and recommendations, need not be integrated or taken into account in a binding manner in the application of the rules with respect to the interpretation which the referring court is seeking guidance from the Court of Justice, irrespective of whether they concern the freedom of movement of persons, services and capital (Articles 45, 49, 56 and 63 TFEU) or the competition rules (Articles 101 and 102 TFEU).

Therefore, the Court of Justice reiterated that Article 165 TFEU cannot be regarded as being a rule exempting sport from all or some of the other primary provisions of EU law liable to be applied to it or requiring special treatment for sport in the context of that application.

Although less celebrated than the *Superleague* ruling, the *ISU* case deserves great attention, in particular with regard to the conditions under which an arbitral justice system and the relevant jurisdictional control can be considered

consistent with EU law. That reasoning directly foreshadowed the Grand Chamber's approach in *Seraing*, where the Court of Justice reaffirmed and refined the principle that arbitral awards applying EU law must remain subject to review by a court of a Member State empowered to make a preliminary reference under Article 267 TFEU and to safeguard compliance with EU public policy.

In this sense, *Seraing* consolidates the concerns already raised in *ISU* about the structural limits of CAS arbitration, and confirms that its legitimacy within the EU legal order depends on the effective judicial protection guaranteed by Articles 19 TEU and 47 of the Charter.

The most recent jurisprudence coupled with the current pending cases, would very likely push the sports federations to “*think out of the box*”, possibly to reinvent themselves in order to keep on carrying out their important cultural and social functions to progress in the sports business by complying with EU fundamental freedoms.

For this reason, the forthcoming ECJ's case law should receive the utmost consideration from the concerned sports associations. The latter should make the effort to probably adopt innovative policies and strategies. In conclusion, they should qualify themselves and be recognized as the competent and legitimate organizations carrying out vital cultural, economic and social functions.

This way, they would deserve to progress in the sports business at the condition of complying with EU fundamental freedoms.

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