



Court of Justice of the European Union

**PRESS RELEASE No 164/12**

Luxembourg, 12 December 2012

Advocate General's Opinion in Cases C-201/11 P, C-204/11 P and  
C-205/11 P  
UEFA and FIFA v Commission

Press and Information

## **Advocate General Jääskinen proposes that the Court dismiss FIFA and UEFA's appeals against the judgments of the General Court concerning the television broadcasting of the Football World Cup and the European Championships**

*If those competitions are considered by Member States to be events of major importance for their society, those Member States may, in order to ensure broad public access, require that they be broadcast on free-to-air television*

The directive on television broadcasting<sup>1</sup> allows Member States to prohibit the exclusive broadcasting of events which they deem to be of major importance for society, where such exclusive broadcasting would deprive a substantial proportion of the public of the possibility of following those events on free-to-air television.

The Fédération Internationale de Football Association (FIFA) organises the finals of the Football World Cup ('the World Cup') and the Union of European Football Associations (UEFA) organises the finals of the European Football Championship ('the EURO'). The sale of the television broadcasting rights for those competitions constitutes a significant source of their revenue.

Both Belgium and the United Kingdom drew up a list of events considered to be of major importance for their society. Belgium's list included, inter alia, all of the matches of the World Cup finals, while the United Kingdom's list included, inter alia, all of the matches of the World Cup finals and of the EURO finals. Those lists were sent to the Commission which decided that they were compatible with EU law.

However, FIFA and UEFA brought actions against those decisions before the General Court, contesting the finding that all of those matches may constitute events of major importance for the public of those States. As the General Court dismissed<sup>2</sup> their actions, they brought appeals before the Court of Justice.

In his Opinion delivered today, Advocate General Niilo Jääskinen examines, first of all, the distribution of competence between the Member States and the Commission as regards the prohibition of exclusive broadcasting of events of major importance for society. He states that, in accordance with the directive, the Member States alone are competent to draw up the national lists intended to ensure that events of major importance for society are broadcast on free television. In that respect, they have a certain degree of discretion in choosing the measures which they consider best suited to achieving, in the context of their distinctive national, cultural, and social characteristics, the objective of that directive: ensuring freedom to provide television broadcasting services.

Consequently, Advocate General Jääskinen considers that the check which the Commission is entitled to carry out in respect of the exercise of the Member States' discretion in establishing the national lists is limited to ascertaining whether there is a manifest error of assessment.

<sup>1</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60).

<sup>2</sup> *FIFA and UEFA v Commission* (Case [T-385/07](#), Case [T-55/08](#) and Case [T-68/08](#)), see also Press Release No [9/11](#).

Accordingly, the Commission is required, above all, to check the procedure for drawing up the national lists in the light of the criteria of transparency and clarity and to ensure that the events chosen by the Member States may actually be considered to be of major importance for society. Moreover, the Commission must ensure that the national lists do not provide for a greater derogation from fundamental freedoms than that provided for in the directive. Likewise, the Commission must check the national lists from the perspective of general principles, such as non-discrimination on grounds of nationality. Nevertheless, in the Advocate General's view, the Commission's review must be objective in nature and limited in scope.

However, in its decision-making process, the Commission must not limit itself to an automatic verification of the national lists. On the contrary, it is required, within the limits of its powers, to observe, *inter alia*, the principle of good administration, which entails the duty to examine carefully and impartially all the relevant aspects of the individual case. Nevertheless, such an examination does not preclude the repetition of identically worded statements in its decisions, inasmuch as the criteria in the light of which the Commission checks for manifest errors of assessment on the part of the Member States remain unchanged.

In that context, the Advocate General points out that the General Court's review of the Commission's application of its power of verification must also be confined to ascertaining whether the Commission properly found or rejected the existence of a manifest error by the Member State in question.

Subsequently, the Advocate General states that, by reserving to Member States the right to draw up the list of events of major importance for their society, the legislature of the EU sought to reconcile the objective of promoting the freedom to provide services in the field of television broadcasting and that of protecting the right to information within the context of the cultural diversity of the Member States. Accordingly, a restriction on that fundamental freedom was voluntarily conceived by the legislature of the EU as indispensable for the purposes of ensuring access of a large audience to events of major importance for society. As such, it must, in principle, be considered justified, and therefore proportionate.

As regards FIFA and UEFA's argument that the limitation of the exclusive broadcasting of the sporting events which they organise infringes their right to property, Advocate General Jääskinen notes that since the right to property arising from the broadcasting of sporting events is defined neither in national law nor in EU law, its field of application depends – for its very existence – on the provisions setting out its limits, such as the directive. For that reason, the measure at issue does not constitute an obstacle to the right to property within the meaning of the Charter of Fundamental Rights.

Finally, Advocate General Jääskinen proposes that the Court confirm that, although the World Cup and the EURO are mentioned in the directive as examples of events of major importance for society, that does not mean that the entirety of those sporting events may, in all cases, be included on the national list irrespective of the interest which they arouse in the Member State concerned. On the other hand, the reference to the World Cup and the EURO in the directive implies that, where the Member State includes matches of those tournaments on the national list, it does not need to include in its notification to the Commission specific grounds concerning their nature 'as an event of major importance for society'.

In those circumstances, Advocate General Jääskinen considers that the General Court correctly exercised its power of judicial review and therefore proposes that the Court **dismiss the appeals in their entirety**.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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