



Press and Information

General Court of the European Union  
**PRESS RELEASE No 159/20**  
Luxembourg, 16 December 2020

Judgment in Case T-93/18  
International Skating Union v Commission

---

**The General Court confirms that the rules of the International Skating Union (ISU) providing for severe penalties for athletes taking part in speed skating events not recognised by it are contrary to EU competition law**

*On the other hand, the Commission was wrong to dispute the ISU's arbitration rules*

The International Skating Union (ISU) is the sole international sports federation recognised by the International Olympic Committee (IOC) for the purpose of managing and administering figure skating and speed skating. The ISU also carries out a commercial activity entailing the organisation of various speed skating events in the context of the most important international competitions, such as the European and World Championships and the Winter Olympic Games.

In 2014, the Korean company Icederby International Co. Ltd sought to organise a speed skating competition involving events in a new format in Dubai (United Arab Emirates). Since the ISU had not authorised that event, that organiser found it difficult to ensure the participation of professional speed skaters, which led it to abandon its plan. Skaters affiliated to national federations that are members of the ISU are subject, under the ISU's statutes, to a pre-authorisation system, which includes 'eligibility rules'. By virtue of those rules, in the version applicable to that period, the participation of a skater in an unauthorised competition exposed him or her to a penalty of a lifetime ban from any competition organised by the ISU.

Having received a complaint made by two Dutch professional speed skaters, the European Commission considered, in its decision of 8 December 2017<sup>1</sup> ('the contested decision'), that the ISU's eligibility rules were incompatible with EU competition rules (Article 101 TFEU), in so far as their object was to restrict the possibilities for professional speed skaters to take part freely in international events organised by third parties and, therefore, they deprived those third parties of the services of athletes necessary in order to organise those competitions. The Commission, consequently, ordered the ISU, subject to a periodic penalty payment, to put an end to the infringement thus found, without, however, imposing a fine on it.

The ISU brought an action against the contested decision before the General Court of the European Union. The General Court, called upon to rule for the first time on a Commission decision finding that rules adopted by a sports federation do not comply with EU competition law, confirms that the classification of a restriction of competition by object established by the Commission in respect of the rules at issue is well founded, but partially annuls the contested decision as regards the corrective measures imposed on the ISU.

---

<sup>1</sup> Commission Decision C (2017) 8230 final, adopted on 8 December 2017 relating to proceedings under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (Case AT/40208 — International Skating Union's eligibility rules).

## Assessment of the General Court

In the first place, the General Court finds that the Commission was right to conclude that the eligibility rules have as their object the restriction of competition within the meaning of Article 101 TFEU.

In that regard, the General Court finds, first of all, that the situation in which the ISU finds itself is capable of giving rise to a conflict of interests. On the one hand, the ISU carries out a regulatory function, by virtue of which it has the power to adopt rules in the disciplines for which it is responsible, and, thus, to authorise competitions organised by third parties, while, on the other hand, in the context of its commercial activity, for its own part, it organises the most important speed skating competitions in which professional skaters must participate in order to earn their living. In that regard, the General Court considers that the obligations binding on a sports federation in the exercise of its regulatory function under Article 101 TFEU are those consistently set out in the case law relating to the application of Articles 102 and 106 TFEU,<sup>2</sup> with the result that, in those circumstances, the ISU is required to ensure, when examining applications for authorisation, that third-party organisers of speed skating competitions are not unduly deprived of access to the relevant market, to the extent that competition on that market is distorted.

Having stated the above, the General Court then examines the Commission's assessment concerning the content of the eligibility rules. It finds at the outset that those rules do not expressly set out the legitimate objectives pursued and have only set out authorisation criteria, which moreover are not exhaustive, since 2015. In those circumstances, the requirements applied as from that date cannot all be regarded as clearly defined, transparent, non-discriminatory and reviewable authorisation criteria, which, as such, would be capable of ensuring the organisers of competitions effective access to the relevant market. Consequently, the General Court considers that the ISU retained, including after the adoption of authorisation criteria in 2015, broad discretion to refuse to authorise competitions proposed by third parties.

Furthermore, as regards the system of penalties, the General Court stresses that the severity of the penalties provided for is particularly relevant when identifying potential obstacles to the proper functioning of competition on the relevant market. Such severity may dissuade athletes from taking part in competitions not authorised by the ISU, including where there is no legitimate reason for such a refusal to grant authorisation. In the present case, the General Court considers that the penalties provided for by the eligibility rules, even after the relaxation of the rules that took place in 2016, are disproportionate. Since that date, not only have the categories of infringements remained ill defined, but the duration of the penalties incurred, inter alia in the event of participation in unauthorised third-party competitions, have remained severe given the average length of a skater's career.

Finally, the General Court examines the Commission's assessment concerning the objectives pursued by the eligibility rules. In that regard, the General Court recalls that the protection of the integrity of the sport constitutes a legitimate objective recognised in Article 165 TFEU. The General Court consequently acknowledges that it was legitimate for the ISU to establish rules seeking both to avoid the risks of manipulation of competitions liable to result from sports betting and to ensure that sporting competitions meet common standards. However, in the present case, the fact remains that the rules adopted by the ISU go beyond what is necessary to achieve such objectives and, accordingly, are not proportionate to those objectives. Consequently, the Commission was fully entitled to consider that the restrictions deriving from the pre-authorisation system cannot be justified by the objectives in question.

In the light of all those considerations, the Commission was therefore right to conclude that the eligibility rules reveal a sufficient degree of harm, in particular with regard to their content, to be regarded as restricting competition by object.

---

<sup>2</sup> Judgments of the Court of Justice of 1 July 2008, *MOTOE*, [C-49/07](#) (paragraphs 51 and 52), and of 28 February 2013, *Ordem dos Técnicos Oficiais de Contas*, [C-1/12](#) (paragraphs 88 and 92); see also [PR No 21/13](#)).

In the second place, the General Court rules on the legality of the corrective measures imposed by the contested decision in order to bring an end to the infringement found and partially upholds the applicant's claims for annulment in that regard, in so far as the Commission required, subject to a periodic penalty payment, substantial modification of the ISU's arbitration rules in the event that the pre-authorisation system was retained.

In that regard, the General Court notes that the Commission considered that those arbitration rules, which confer on the Court of Arbitration for Sport in Lausanne (Switzerland) exclusive jurisdiction to hear appeals against ineligibility decisions and make such arbitration binding, reinforced the restrictions of competition caused by the eligibility rules. In so far as the Commission drew, in that regard, on the Guidelines on the method of setting fines,<sup>3</sup> and, more specifically, on the concept of an 'aggravating circumstance' contained therein, the General Court stresses that only unlawful conduct or circumstances which render the infringement more harmful can justify an increase in the penalty imposed for an infringement of EU competition law. In the present case, the General Court considers that there are no such unlawful circumstances. The Commission was not therefore entitled to consider that the ISU's arbitration rules constituted an aggravating circumstance.

---

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

---

*Unofficial document for media use, not binding on the General Court.*

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

---

<sup>3</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).