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Advocate General's Opinions in Cases C-209/23 | RRC Sports, C-428/23 | ROGON and others
and C-133/24 | Tondela and others

Advocate General Emiliou: Sports governing bodies are limited in their self-regulation if there is a significant impact on matters governed by EU law

This limitation is without prejudice to the fundamental freedom of association

On a number of occasions already, ¹ the Court has reviewed, against the background of EU competition and/or internal market rules, certain regulations adopted by national or international sports associations. The three present cases follow in the wake of that case law.

In **Case C-209/23 (RRC Sports)**, two football agents are seeking to prevent the application of certain rules contained in an international sports association's ² regulatory framework ³ governing, amongst other things, the remuneration, activities, and conduct of such agents. They argue that those rules are in violation of the freedom to provide services, of EU rules on competition and of certain data protection provisions. For its part, FIFA considers the rules in question both lawful and necessary for the integrity of football.

In **Case C-428/23 (ROGON and others)**, the Bundesgerichtshof (Federal Court of Justice, Germany) raises questions in a similar dispute. Two undertakings providing consultancy and representation services to football players, and the managing director of one of those firms, are seeking to prevent a national sports association's ⁴ regulations governing the activities of football agents from allegedly causing irreparable harm.

In **Case C-133/24 (Tondela and others)**, football clubs playing in the Portuguese first and second divisions concluded an agreement with the national football association, during the COVID-19 pandemic. The clubs agreed to abstain from signing players who had unilaterally terminated their contracts due to pandemic-related issues.

The present cases raise further important questions regarding the autonomy of both national and international sports governing bodies, and the extent to which the regulations adopted by such bodies must comply with EU competition, internal market and data protection rules.

In three separate Opinions, Advocate General Nicholas Emiliou deals with the various legal issues raised by those cases.

First, Advocate General Emiliou argues in favour of a narrow interpretation of the '**sporting exception**',

according to which specific rules which are adopted solely on non-economic grounds and which relate to questions of interest solely to sport fall outside the scope of the EU rules on competition and internal market. He considers the sporting exception as the mere expression of two well-established principles of EU law. First, that EU provisions on competition and free movement are, in principle, applicable to economic activities and intra-Union trade, and, second, that rules by self-governing bodies that do have an effect on such economic activities and/or on intra-Union trade may fall outside of the scope of those EU provisions, if said effect is minor.

Advocate General Emiliou then proposes that the Court should find that EU law allows sports associations to adopt regulations related to the activity of operators acting in a market upstream or downstream from those in which the association or its members are active (such as football agents). While such regulations are in principle acceptable, should they be found to have significant anticompetitive effects they would need to be justified. Such justification would be possible if they were found to pursue legitimate sporting objectives while satisfying the proportionality and effectiveness tests (the 'Meca-Medina case-law').⁵ Alternatively, they may be justified by satisfying the conditions for an exemption laid down in the Treaty. The Advocate General then reviews the regulations in question against the rules on free movement, clarifying the conditions in which they can be considered to comply with those rules.

In addition, the Advocate General examines the distinction between restrictions of competition by object and by effect, and takes the view that **'no-poach' agreements** are, generally, restrictive 'by object'. However, given its specific objective and limited scope, and the exceptional circumstances in which it was concluded (the COVID-19 pandemic), he takes the view that the agreement in question is not restrictive 'by object' and could probably be justified.

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: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full texts of the Opinions ([C-209/23](#), [C-428/23](#) and [C-133/24](#)) are published on the CURIA website on the day of delivery.

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

Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Judgment of 21 December 2023, *International Skating Union v Commission*, [C-124/21 P](#) (see also Press Release [No 202/23](#)); Judgment of 21 December 2023, *European Superleague Company*, [C-333/21](#) (see also Press Release [No 203/23](#)); Judgment of 21 December 2023, *Royal Antwerp Football Club*, [C-](#)

[680/21](#) (see also Press Release [No 205/23](#)) and Judgment of 4 October 2024, *FIFA*, [C-650/22](#) (see also Press Release [No 172/24](#)).

² Fédération Internationale de Football Association ('FIFA').

³ On 16 December 2022, FIFA's Council adopted the FIFA Football Agent Regulations, which were subsequently published on 6 January 2023.

⁴ Deutscher Fußballbund e. V. (the German Football League, 'DFB').

⁵ Judgment of 18 July 2006, *Meca-Medina and Majcen v Commission*, [C-519/04 P](#) (see also Press Release [No 65/06](#)) and the cases mentioned under Endnote I. This is a line of cases that allows for certain restrictions that would usually be considered anti-competitive under EU law to be upheld in the context of sport, if they are proportionate and necessary for achieving legitimate objectives in the public interest like fairness, health, and integrity in sport.