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Judgment of the Court in Case C-428/23 | ROGON and Others

The regulations of the German Football Association (DFB) on the activity of players' agents may fall within an exception to the prohibition on cartels

The exception established by the Court of Justice for restrictions pursuing a legitimate objective in the public interest may, under certain conditions, apply to regulations adopted by a sports federation which, whilst addressing its members, regulate the use of the services of third-party companies

In 2015, the German Football Federation (the DFB) adopted regulations on the activities of players' agents. Those regulations govern the use by players and clubs of the services of an agent for the conclusion of professional player contracts and transfer agreements.

Among other things, they impose an obligation to register agents and require agents to submit to various statutes, regulations and rules of the *Fédération internationale de football association* (FIFA), the DFB and the German Football League (the DFL), including the jurisdiction of the DFB. In the case of an inward transfer, they prohibit agents from taking a share in the club's future transfer proceeds and also prohibit commissions for the agents' services in the case of a transfer of a minor. Furthermore, they impose an obligation to disclose remuneration and payments made to agents. Finally, they make provision for penalties in the event of infringements.

A German company, its founder and an Austrian company, all engaged in the recruitment of players, challenged those regulations before the German courts, arguing that they contravene the prohibition on cartels laid down by EU law.

The German Federal Court of Justice referred questions to the Court of Justice for a preliminary ruling on that issue. It seeks to ascertain whether regulations such as those may fall within an exception to the prohibition on cartels, established by the Court ¹ for cases of restrictions on competition pursuing a legitimate objective in the public interest.

The Court holds that **the exception in question may, under certain conditions, apply to regulations adopted by a sports federation which, like those at issue, whilst addressing its members, regulate the use of the services of third-party undertakings not belonging to that federation, such as players' agents.** ²

The fact that regulations adopted by an association such as the DFB produce some of their effects, not only with regard to its members, but also with regard to third party undertakings which maintain relations with those members, may prove to be necessary in order to pursue one or more legitimate objectives in the public interest which are not, in themselves, anti-competitive.

In particular, that may be the case where, in order to achieve such objectives, a sports federation is required to adopt regulations capable of having implications for the ecosystem which they regulate and control.

In the professional and semi-professional football sector, different categories of economic operators, such as clubs, national federations, players and agents, must interact and, to a certain extent, cooperate in order to ensure the viability of the sector and its attractiveness to supporters and spectators. If the end services, consisting of matches and tournaments, were not sufficiently attractive or adequately broadcast, all of those different categories of economic operators would be negatively impacted.

That being said, it is essential to ensure in concrete terms that such regulations, first, cannot be classified as an agreement between undertakings or a decision by an association of undertakings having the object of restricting competition and, second, are justified by the pursuit of a legitimate objective in the public interest in the light of which they appear, strictly speaking, appropriate, necessary and proportionate. In the present case, **it is for the Federal Court of Justice to determine whether the contested DFB regulations fulfil all of the conditions for the application of the exception at issue.**

Those conditions need not necessarily be assessed in relation to each of the provisions of the regulations at issue, but in relation to a set of provisions pursuing a distinct objective or producing a distinct effect.

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. That decision is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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¹ Judgments of 19 February 2002, *Wouters and Others*, [C-309/99](#) (see also press release [No 15/02](#)) and of 18 July 2006, *Meca-Medina and Majcen v Commission*, [C-519/04 P](#) (see also press release [No 65/06](#)).

² The Court first notes that the regulations at issue may fall within the scope of the prohibition of cartels (Article 101 TFEU). In particular, they are not part of specific rules which must be regarded as being extraneous to any economic activity because, first, they were adopted exclusively for non-economic reasons and, second, they relate to questions of interest solely to sport per se. Moreover, the DFB may be regarded as having the status of an association of undertakings both on the sports ticketing, sponsorship or merchandising markets and on those that are upstream of those markets, such as the recruitment of players or trainers, or the services of agents for the transfer of professional players or trainers from one club to another.