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Michał Biliński
Jagiellonian University in Kraków, Poland
e-mail: michal.bilinski@uj.edu.pl
ORCID: 0000-0002-4660-8850

FOOTBALL SUPER LEAGUE AND THE VALUES OF EUROPEAN SPORT. CRITICAL ANALYSIS OF THE OPINION OF THE ADVOCATE GENERAL IN CASE C-333/21

Abstract

The article presents author's own opinion on case C-333/21 which concerns the controversial project of organizing a football Super League (ESL). The aim of this initiative is to develop a commercial organizational formula for football competition, which at the same time would be independent of the structures of FIFA and UEFA. For the above reasons, the resolution of the dispute before the Court of Justice of the European Union has a significant impact on the answer to the question about the future of the organizational structure of European football. In this case, the EU competition law and the determination of a catalog of values are of fundamental importance that could possibly justify compliance of the restrictions applied by FIFA and UEFA in relation to ESL organizers with Articles 101 and 102 TFUE.

KEYWORDS

European Super League Company, sports law, antitrust law, values in sport, European model of sport

SŁOWA KLUCZOWE

European Super League Company, prawo sportowe, prawo antymonopolowe, wartości w sporcie, europejski model sportu

1. INTRODUCTION

European Super League (ESL)[1] is a project of commercial, cyclical football competitions whose participants were to be the leading European football clubs. Among the founders were twelve organizations, including: Real Madrid, FC Barcelona, Juventus Turin, AC Milan, Manchester United, and Arsenal London. According to the accepted assumptions, the ESL competitions were to be partially closed (assuming the permanent participation of the founding organizations, 15 places) while allowing the annual participation of five additional clubs, based on the adopted qualifying mechanism. As part of the presented format of the new football competition, the following elements, among others, were announced: the highest quality of the games offered and increasing financial inflows for European football, which were supposed to grow together with the growth of the company's revenues.

It needs to be emphasized that the above concept of creating new football competitions, independent of FIFA and UEFA structures, raises questions related to the very existence of the organizational structure of modern football and has encountered intense criticism from representatives of public authorities, football circles, and fans.

Firstly, the international football federations, i.e., FIFA and UEFA,[2] expressed their unanimous negative opinion about the idea of establishing a new competition formula. In the first place, both organizations saw the ESL project as a rival one for their own tournaments, especially the Champions League. The organizations also threatened that in the event of the launch of the said competitions, they would impose sanctions on both clubs and players who would take part in

[1] The project of the football Super League is run by the European Super League Company, S. L., and it was announced on 18 April 2021.

[2] Following the announcement of the creation of the Super League, on 21 January 2021, FIFA and UEFA issued a joint statement in which they expressed their refusal to recognize this new entity and warned that any player or club participating in these new competitions would be excluded from the competitions organized by FIFA and its confederations. In a further communication dated 18 April 2021, UEFA and other national federations supported this statement, recalling the possibility of disciplinary measures.

the new project.[3] The authorities of the most important national football leagues, including the English Premier League, Italian Serie A, and Spanish La Liga[4] also spoke critically about the Super League. It is also worth noting that the project in question was not accepted by many other major football clubs, e.g., Bayern Munich, Paris Saint Germain, or Borussia Dortmund, which rejected proposals to join the organization.[5]

The reaction of the fans of the club teams that were involved in the ESL should also be considered as extremely important. There was no doubt about the very negative attitude of these circles in relation to the idea of creating an alternative formula of football competition. It seems that the opinions expressed by the fans had the greatest impact on the decision of most football organizations to withdraw from the project. As a result, a few days after its announcement, English clubs (Arsenal, Manchester United, Manchester City, Tottenham, Chelsea, and Liverpool), Italian clubs (Inter Milan and AC Milan), and a Spanish club (Atletico Madrid) withdrew from the ESL. As a result of the above actions, only 3 football clubs remained among the founding organizations (Real Madrid, FC Barcelona, Juventus Turin) and the very idea of creating the Super League was suspended.

In this situation, the three above-mentioned entities, led by the President of Real Madrid – Florentino Perez, decided to refer the case to the commercial court in Madrid, which then formulated a number of questions for a preliminary ruling to the CJEU regarding the application of Articles 101 and 102 TFUE to the activities of FIFA and UEFA football federations and the admissibility of applying sanctions by these structures against participants of the football Super League.

The purpose of this article is to present the author's own opinion on the case before the CJEU and at the same time to answer the question whether the treaty provisions do not prevent football federations from introducing certain restrictions that are aimed at limiting or even preventing the implementation of the ESL project.

2. BACKGROUND TO THE DISPUTE AND PRELIMINARY QUESTIONS FROM THE SPANISH COMMERCIAL COURT

As already noted, the impetus for initiating the proceedings before the CJEU was a claim filed by the European Super League Company with the commercial

[3] M. Auzbiter, *Superliga nie odpuszcza i pozywa UEFA i FIFA do TSUE,* (in:) www.rp.pl/prawo-dla-ciebie, 22 June 2022, (accessed: 24 February 2023).

[4] S. Stone, *European Super League: Uefa and Premier League condemn 12 major clubs signing up to breakaway plans,* (in:) www.bbc.com/sport, 18 April 2021 (accessed: 24 February 2023).

[5] Bayern, *PSG reject Super League in favor of Champions League*, (in:) www.espn.co.uk/footbal, 20 April 2021 (accessed: 24 February 2023).

court in Madrid[6] against the Union of European Football Associations (UEFA) and the Fédération Internationale de Football Association (FIFA). The claim included, in particular, a motion to declare that by opposing the creation of the European Super League, the defendant violates the competition law and abuses its dominant position on the market for organizing international football club competitions in Europe and on the market for the sale of rights related to these competitions. The plaintiff also requested interim measures to enable the organization and development of the European Super League.

Following a claim filed by the ESL, the Spanish court decided to refer to the Court of Justice of the European Union, pursuant to Article 267 TFEU, six questions for a preliminary ruling, which in general concerned the interpretation of Articles 101, 102, 45, 49, 56 and 63 TFEU.[7] The referring court pointed out that FIFA and UEFA had a 100% market share in the organization of international football competitions, which meant that those organizations had a monopoly in that area of activity. It was also noted that FIFA and UEFA adopted rules applicable to football competitions and granted themselves the power to impose sanctions or disciplinary measures, which constitute an insurmountable obstacle to the entry of new competitors into the European market for international club football competitions and to the sale of rights related to those competitions.[8]

Among the most important issues raised in the questions referred for a preliminary ruling by the commercial court in Madrid, it is worth mentioning, among others:

- question on the interpretation of Article 102 TFUE in such a way that it prohibits the abuse of a dominant position consisting in the fact that FIFA and UEFA establish, among others, in their statutes that prior approval from FIFA and UEFA is required for the creation by a third party of new pan-European club competitions, such as the Super League,
- question on the interpretation of Article 101 TFUE in such a way that it prohibits FIFA and UEFA from requiring in their statutes prior consent of these entities to organize international competitions in Europe,
- question on the interpretation of Articles 101 and 102 TFUE in such a way that they prohibit FIFA, UEFA, their member federations, or national leagues from threatening to impose sanctions on clubs participating in the Super League.

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[6] The claim was accepted for consideration on 19 April 2021 by Juzgado de lo Mercantil n° 17 de Madrid.

[7] R. Bujalski, *Superliga Europejska: UEFA. Do przerwy 0 : 1. Omówienie opinii rzecznika generalnego TSUE z dnia 15 grudnia 2022 r., C-333/21 (European Super League Company)*, LEX/el. 2022.

[8] Case C-333/21, request for a preliminary ruling available on the website www.curia.europa.eu.

3. ANALYSIS OF THE ASSUMPTIONS PRESENTED IN THE OPINION OF THE ADVOCATE GENERAL IN CASE C-333/21

A few months after the initiation of the proceedings before the Court of Justice (case C-333/21), the Opinion of the Advocate General, Athanasios Rantos,[9] was presented in this case. It is worth noting that already in the introduction to the Opinion, the Advocate General emphasized that this particular request for a preliminary ruling raised questions about the very essence of the existence of the organizational structure of modern football and its future would depend on the opinion of the Court of Justice on this matter. With reference to the above observation of the Advocate General, it should be noted that the conclusions contained in the Opinion leave a certain deficiency because they are quite conservative and may be accompanied by controversies.

With the above in mind, first of all, the content of the proposals for the answers to the questions for a preliminary ruling expressed by the Advocate General in the Opinion of 15 December 2022 should be quoted.

Firstly, in point V.1) of the Opinion, the Advocate General proposed that in the expected judgment, Tribunal should express the position according to which Articles 101 and 102 TFUE must be interpreted in such a way as not to preclude the FIFA and UEFA regulations, which provide that the creation of new pan-European club football competitions is subject to a system of prior authorization since, taking into consideration the characteristics of the competitions envisaged, the restrictive effects resulting from that system appear to be inherent and proportionate to the legitimate objectives pursued by UEFA and FIFA, which are related to the specific nature of sport.

Secondly, in point V.2), an interpretation of Articles 101 and 102 TFUE was suggested, in so far as they do not prohibit FIFA, UEFA, their member federations, or their national leagues from threatening to impose sanctions on clubs affiliated to those federations if those clubs participate in a project to create a new pan-European club football competition, which could jeopardize the legitimate purposes pursued by the said federations, of which those clubs are members. However, the exclusion sanctions targeted at players, who are not involved in any way in the contested project, are disproportionate, in particular, with regard to their exclusion from national teams.

Thirdly, in point V.3) of the Opinion, it was noted that Articles 101 and 102 TFUE must be interpreted as not precluding Articles 67 and 68 of the FIFA statutes to the extent that the restrictions relating to the exclusive sale of rights connected with competitions organized by FIFA and UEFA appear to be intrinsically related to and proportionate to the pursuit of legitimate objectives associated with

[9] Opinion of the Advocate General of 25 December 2022 in case C-333/21, www.curia.europa.eu.

the specific nature of sport. Furthermore, it is for the referring court to ascertain to what extent the articles in question may benefit from the exemption provided for in Article 101 sec. 3 TFUE or whether there is an objective justification for this behavior within the meaning of Article 102 TFUE.

Fourth, it is proposed in point V.4) that Articles 45, 49, 56, and 63 TFUE should be interpreted as not precluding the statutory provisions of FIFA and UEFA, which provide that the creation of new pan-European club football competitions is subject to a system of prior authorization in so far as that requirement is appropriate and necessary for that purpose, taking into account the specific characteristics of the planned competitions.

Moving on to the analysis of the problems presented in the Opinion of the Advocate General, one should first agree with the initial findings made therein. First of all, it should be noted that the observations of the Advocate General concerning the specific nature of sport included in EU law do not raise any doubts. In this regard, the Opinion drew attention to the role of Article 165 TFUE, which emphasizes the social importance of sport and indicates that Union actions should aim at developing a European dimension of sport, by promoting fairness and accessibility in sports competition and cooperation between entities responsible for sport, as well as by protecting the physical and mental integrity of athletes. In Recital 29 of the Opinion, it is also noted that the content of Article 165 TFUE crystallized a number of conclusions on the role and function of European sport, which have been shaped since the 1990s, following the judgments issued by the CJEU, including, in particular, the judgment in the Bosman case.[10]

The Advocate General also rightly emphasized the importance of the so-called European Sports Model, the goals of which include popularization of open sports competitions based on a transparent system of relegation and promotion, as well as a system of financial solidarity that allows for the redistribution and reinvestment of the income generated by elite events and activities at lower levels of sport (Recital 30 of the Opinion).

At the same time, there are no fundamental doubts regarding the observation that the above model of sport adopted in most sports competitions in Europe is based on the activities of sports federations, whose tasks include, among others, ensuring compliance with and uniform application of the rules governing individual sports disciplines. At the same time, it is quite obvious that the most important features of the European model of sport include its pyramidal structure, inside of which sports federations at the national and international level have a monopoly within their geographical jurisdiction (cf. Recital 31 of the Opinion).

[10] Judgment of the CJEU of 15 December 1995, C 415/93; J.C. Drolet, *Extra Time: Are the New FIFA Transfer Rules Doomed?,* (in:) S. Gardiner, R. Parrish, R.C. Siekmann (ed.), *EU, Sport, Law and Policy. Regulation, Re-regulation and Representation, TMC Asser Press The Hague 2009*, p. 167.

What is important, in the opinion of 15 December 2022, it was also noted that modern sport is a significant area of economic activity. Consequently, the purpose of the introduction of Article 165 TFUE was to emphasize the specific social nature of that economic activity, which may justify different treatment in certain respects (Recital 34 of the Opinion). At the same time, the Advocate General stated that perceiving the sphere of sport as a platform for commercial activity means that Article 165 TFUE cannot be interpreted in isolation, contrary to the requirements of Articles 101 and 102 TFUE (which also apply in the field of sport).

As a consequence of the above findings, the Advocate General then pointed out that the 'separatist movements' observed in Europe and the sometimes offered 'alternative models' of organizing sports competitions in Europe,[11] while challenging the monopoly of some European sports federations, usually base their arguments on competition law (see Recital 36 and 37 of the Opinion). As indicated in Recital 37 of the Opinion of the Advocate General, the most common arguments in such cases include, among others, the dual role of sports federations as a regulator and economic operator, the monopolistic structure of certain markets for the organization of sports competitions, and the sale of related rights, as well as the refusal of these federations to allow independent competitions to be organized and, consequently, to allow new competitors to enter the markets concerned.

Looking at the questions referred for a preliminary ruling in case C-333/21, it can easily be concluded that the claim brought by the European Super League Company in the present case is based on similar arguments.

In this state of affairs, it should be stated that the key issue for the correct resolution of the dispute that occurred in the above case is balancing the relationship between the economic essence of modern sports services and those specific characteristics of sport protected in Article 165 TFEU. There are no fundamental doubts that sport, to the extent in which it constitutes an economic activity, is subject to EU law, including, in particular, the provisions of the TFEU regarding EU economic law. On the other hand, as indicated in Recital 42 of the Opinion, while the specific features of sport cannot be invoked to exclude sporting activities from the scope of the EU and FEU Treaties, then the references to those features and to the social and educational function of sport that are included in Article 165 TFEU may be relevant, in particular, for the possible objective justification of restrictions of competition or fundamental treaty freedoms.

For this reason, the position expressed by the Advocate General in Recital 49, according to which sports federations may, under certain conditions, refuse market access to third parties, which does not constitute an infringement of Articles 101 and 102 TFEU, provided that such a refusal is justified by legitimate

[11] Case C-124/21 P, concerning the International Skating Union (ISU), provides the best example in this regard.

objectives and the measures taken by those federations are proportionate to those objectives, must be regarded as appropriate. At the same time, however, it should be strongly emphasized that this wording cannot automatically mean that specific actions taken by FIFA and UEFA regarding the Super League will always benefit from the above exception.

In this state of affairs, although I share the observations of the Advocate General presented above as to the shape of the organizational structure of sport in Europe and its axiological background, I would also like to propose a look at the concept presented in the Opinion of 15 December 2022 from a different perspective.

The comments made by the Advocate General in Recitals 85 and 86 of the Opinion are of key importance for further considerations. In these comments it was pointed out that in order to justify the admissibility of specific restrictions that could be imposed on the organizers of the European Super League the ancillary restraints doctrine would be useful. In the literature, the concept of ancillary restrictions is understood as any alleged restriction of competition that is directly related to the main non-restrictive agreement, and, at the same time, necessary for the effective implementation of the objectives of this agreement.[12] The concept of ancillary restrictions is applied primarily in cases involving concentration of enterprises, however, it can also be applied to restrictions of competition accompanying other types of agreements.

Importantly, following the case law of the CJEU, the above doctrine was extended to include restrictions that were deemed necessary in relation to the public interest. Judgment C-309/99 Wouters played a key role in this regard.[13] It was also the basis for the judgment in case C-519/04 Meca – Medina/Majcen,[14] which is the only case, so far, in the field of sport in which the concept of ancillary restrictions was applied. In the Wouters judgment, the Court of Justice presented, among others, an opinion that the treaty provisions do not preclude the regulations of the Dutch bar association prohibiting cooperation between advocates and chartered accountants because that regulation could reasonably be considered necessary for the proper practice of the profession of the advocate under the rules under which it operates in a given member state. In its judgment in the Meca – Medina/Majcen case, the Court of Justice noted that anti-doping rules (even if they were considered to restrict the freedom of activity of the appellant athletes) did not constitute a restriction of competition because their introduction was jus-

[12] A. Jurkowska–Gomułka, G. Materna, D. Miąsik, (in:) K. Kowalik – Bańczyk, M. Szwarc–Kuczer, A. Wróbel, *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz, Vol. II, (Articles 90 – 222),* Warszawa 2012, commentary on Article 101.

[13] Judgment of the CJEU of 19 February 2002, C-309/99; K. Kohutek, *Gloss to the judgment of the CJEU of 12 December 2013*, C-327/13, LEX/el. 2016.

[14] Judgment of the CJEU of 18 July 2006, C-519/04; B. Rischka-Słowik, *Konstytucja sportu Unii Europejskiej*, Warszawa 2014, p. 398.

tified by a legitimate aim. At the same time, it is a restriction inextricably linked to the organization and proper course of sports competitions.

In my opinion, in the light of the above-mentioned judgments, the arguments adopted by the Advocate General in the Opinion on case C-333/21 are inaccurate.

First of all, as regards cases C-309/99 and C-519/04, I consider that the objectives, which would possibly enable the use of the ancillary restrictions concept in the ESL case, are incomparable. As already pointed out, in judgment C-309/99 Wouters, the CJEU referred to the problem of proper performance of the profession of public trust. At the same time, there is no doubt that ensuring the above attribute of a specific professional activity is in the public interest. In Recitals 100 and 102, the CJEU emphasized, among others, that the 'proper' performance of the profession of an advocate should be based on the obligation to defend a client in the conditions of complete independence and in his sole interest, avoidance of conflicts of interest, and strict observance of professional secrecy. As a consequence, the restrictions imposed by professional corporations serve independence from public authorities, other enterprises, and third parties, and the guarantee that the actions taken in the case are conditioned solely and exclusively by the client's interest. The provisions of the Polish legal order also leave no doubts, where already in Article 17 of the Constitution of the Republic of Poland, the legislator decided that the proper performance of a profession of public trust lies in the public interest which should be supervised by professional self-governments.[15]

Against this background, the opinion of the Advocate General in relation to Article 165 TFEU arouses controversy. In my opinion, in Article 165 TFEU it is not about protecting the 'European Sports Model' but about protecting the values accompanying the phenomenon of sport in general. I consider it somewhat of an overinterpretation of the Advocate General's statement that 'most of the objectives invoked by UEFA and FIFA stem from the 'European Sports Model' and are therefore expressly covered by primary EU law and, in particular, Article 165 TFEU'.[16] One cannot agree with the view that the EU's objective is to protect or even somehow maintain a specific organizational structure in a given sport. Even more specifically, the term 'dimension of sport' used in the TFEU cannot be equated with the word 'model' or 'organizational model'. Following this line of considerations, it should be noted that among the values accompanying sport, listed in Article 165 TFEU, there are objectives of a universal (and not only related to a certain organizational structure) character. For example, it is about the fairness of competition, accessibility, and the physical and mental integrity of participants. Based on the above point of view, a fundamental difference can be seen

[15] More: M. Tabernacka, *Zakres wykonywania zadań publicznych przez organy samorządów zawodowych*, Wrocław 2007; M. Biliński, *Podstawy aksjologiczne regulacji wykonywania tzw. zawodu zaufania publicznego*, (in:) A. Powałowski (ed.), *Aksjologia publicznego prawa gospodarczego*, Warszawa 2022, pp. 169-181.

[16] Recital 93 of the Opinion.

between the objectives that formed the basis of the judgment in Meca – Medina/ Majcen and the objectives proposed in the Advocate General's Opinion in the present case. Because anti-doping regulations uphold values that are universal for sport and are clearly related to the need to ensure fairness, equal opportunities, and uncertainty of the result. The objectives of the restrictions introduced by FIFA and UEFA, referred to in the Opinion of the Advocate General, are, in turn, mostly related to the functioning of a specific organizational format. The conclusion that only one organizational model, i.e., the structure managed by FIFA and UEFA based on the European model of sport, is capable of fulfilling the universal values of sport referred to in Article 165 TFEU, should be considered unjustified.

Secondly, taking into account the above arguments, it seems that the objectives referred to in the Opinion of the Advocate General, which would justify the use of the concept of ancillary restrictions, do not meet the requirements of necessity and proportionality. They are not necessary because the possible creation of a football Super League will not deprive FIFA and UEFA of the possibility to pursue the goals of sport referred to in Article 165 TFEU. In this state of affairs, the restrictions imposed by sports federations are not proportionate to the restrictions imposed on the freedom to engage in economic activity. Of course, one cannot lose sight of the relevant arguments of the Advocate General regarding the phenomenon of the so-called 'free riding' and 'dual membership' allowing to describe the real intentions of the Super League organizers.[17] In my opinion, however, they are aimed primarily at the commercial interests of modern football (cf. below).

Thirdly, one cannot agree with the catalog of goals proposed by the Advocate General justifying the FIFA and UEFA restrictions, due to the fact that these are essentially commercial goals. In Recital 88 of the Opinion, it is explicitly stated (with which, of course, one has to agree) that in some cases it is permissible to balance the 'non-commercial' objectives with the restriction of competition and to state that the former outweigh the latter, as a result of which there is no violation of Article 101 sec. 1 TFEU. However, analyzing the Opinion allows us to conclude that sports competition based on the key value for sport, which is the openness of competition and the uncertainty of the result, in the Opinion is perceived interchangeably with market competition and the economic interest of specific market participants. For example, Recital 102 of the Opinion states that 'such a competition would inevitably have a negative impact on the national championships by reducing the appeal of those competitions'. Recital 103 of the Opinion states that 'competition with the characteristics of the ESL could have a negative impact on the principle of equal opportunities, which is one component of the fairness of competitions. Thanks to their guaranteed participation in the ESL, certain clubs could book significant additional revenue whilst continuing,

[17] Recital 106 of the Opinion of the Advocate General.

at the same time, to participate in national competitions in which they would fight against other clubs that would be unable to generate revenue on a comparable scale'. Finally, Recital 105 explicitly mentions 'the effect of undermining the appeal and the profitability of UEFA's competitions (in particular the Champions League) and of thus reducing the revenue from them'. In my view, the arguments presented in the Opinion, which are based on the forecast of commercial losses of football market participants, cannot be considered legitimate.

In the context of the present case, the Advocate General's comments on the admissibility of undertaking by an enterprise (or association of enterprises such as UEFA) attempts to protect its own economic interests, in particular, in relation to an 'opportunistic' project which could significantly weaken it, must be regarded as relevant (Recital 108 to the Opinion). In particular, the intention of the ESL organizers to remain simultaneously within the structures of FIFA and UEFA and to derive appropriate benefits from this (the so-called 'dual membership'). The Advocate General noted on this occasion that ESL's founding clubs appear to want to enjoy the rights and benefits of UEFA membership, on the one hand, but they do not want to be bound by UEFA's rules and obligations, on the other hand. I cannot agree with the above statement. In my opinion, there are no non-exclusive organizational obstacles which would prevent certain sports clubs from participating simultaneously in two organizational structures of sport and at the same time from complying with those principles and obligations arising from membership in FIFA and UEFA which coincide with universal sport values. Moreover, it can be assumed that this type of activity is, in fact, primarily an economic risk for clubs undertaking the effort (organizational, personnel, financial) to expand their activities so significantly. Of course, if the Advocate General's forecast should come true, one must agree with the observation in Recital 108 of the Opinion that the Court of Justice has already considered appropriate the provisions of the statute of the cooperative union which limit the possibility of its members (including through sanctions of exclusion) to join other forms of competitive cooperation.[18] It should be noted, however, that that judgment clearly states that the relevant statutory provisions prohibiting its members from participating in other forms of organized cooperation are not covered by the treaty prohibitions insofar as they are limited to what is necessary to ensure the proper functioning and maintenance of the contractual power towards producers. In my opinion, in view of the arguments set out above, the restrictions on the organization of the Super League do not meet the above requirement.

The same conclusion should be reached with regard to the proposed answer to the first question referred for a preliminary ruling, concerning the possible abuse by FIFA and UEFA of Article 102 TFEU. It should be noted that the Advocate

[18] Judgment of the ECJ of 15 December 1994 in the case of Dansk Landbrugs Grovvareselskab AmbA (DLG), C-250/92.

General's Opinion indicates that the analysis conducted on the application of the case law on ancillary restrictions will be of fundamental importance for answering the above question. Consequently, the answer to the second question referred for a preliminary ruling can be applied simultaneously to the examination of the measures in the present case in the light of Article 102 TFEU (see Recital 131 of the Opinion).

In this state of affairs, based on the arguments presented above, it seems that the actions taken by FIFA and UEFA in order to protect their own commercial interests do not meet the proportionality requirement and are not objectively justified.

4. CONCLUSION

Considering the above, one cannot agree with the proposals of the Advocate General, which were expressed in point V of the Opinion, in case C-333/21. In my opinion, there are fundamental doubts in the above dispute as to whether there are grounds for limiting the freedom to create new competition systems in the field of European football. In this state of affairs, blocking access to the market and introducing certain restrictions may be perceived as violation of Articles 101 and 102 TFUE. Consequently, the answers to the three key questions referred for a preliminary ruling by the economic court of Madrid in case C-333/21 should head in the opposite direction, i.e., affirmative direction.

Firstly, Articles 101 and 102 TFEU should be interpreted as precluding the FIFA and UEFA rules, which provide that the creation of new pan-European club football competitions is subject to a system of prior authorization (questions 1 and 2).

Secondly, Articles 101 and 102 TFEU prohibit FIFA, UEFA, their member federations, or their national leagues from imposing sanctions on clubs affiliated to those federations if those clubs participate in the project to create a new pan-European club football competition (question 3).

It should also be pointed out that, regardless of the motives of the Super League organizers and the fears caused by the possible launch of new football competitions, I think that an attempt to establish a new formula for football competition should be resolved at the level of market competition. The more so that in the present case the market has already acted, indicating that the traditional model of football games is not in a lost position. This is about the reaction of the fans, whose outrage led to the withdrawal of most of the Super League founders from the project. From another perspective, this behavior can be seen as a reaction of an enterprise to the opinion taken by consumers in relation to the service offered by this enterprise.

I consider the attempts to justify the market struggle with the need to protect universal sports values to be an extremely dangerous phenomenon for contemporary sport. In my opinion, they cannot be used to camouflage the real (based on market play) purpose of restrictions on the freedom of economic activity introduced by sports federations.

This article was prepared and submitted for publication before the ruling of the Court of Justice in case C-333/21. Regardless of the content of the expected ruling, the author of the submitted study hopes to start an in-depth discussion on the current state of the organizational structure of professional sport in Europe, its ability to implement the universal values of sport, and the challenges it will face in the future.

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